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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212477
Party	Defendant GFA Brands, Inc.
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Signature	/Johanna M. Wilbert/
Date	10/20/2014
Attachments	GFA's 9th Notice of Reliance (Cornacchiulo Discovery Dep. Tr. and Exs.pdf(10219 bytes ) Ex I-1 (Cornacchiulo dep tr and exs)_.pdf(4238074 bytes )

**UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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In the Matter of Application Serial No. 85/751,520: EARTH BALANCE  
Published for Opposition March 19, 2013

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BALANCE BAR COMPANY,

Opposer,

Opposition No. 91212477

v.

GFA BRANDS, INC.,

Applicant.

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**APPLICANT'S NINTH NOTICE OF RELIANCE**

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Pursuant to Rule 2.120(j) of the Trademark Rules of Practice, Section 704.09 of the Trademark Trial and Appeal Board Manual of Procedure, Applicant, GFA Brands, Inc., hereby submits, makes of record in connection with this opposition proceeding, and notifies Opposer, Balance Bar Company, of Applicant's reliance upon the June 19, 2014 discovery deposition and accompanying exhibits of Patrick Cornacchiulo, who testified as a Rule 30(b)(6) witness on behalf of Opposer, Balance Bar Company.

A true and correct copy of the discovery deposition and the accompanying exhibits are collectively attached hereto as Exhibit I-1.

Dated this 20th day of October, 2014.

/s/ Johanna M. Wilbert

David R. Cross

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*Attorneys for Applicant GFA Brands, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2014, I served upon counsel of record the foregoing  
by causing the same to be delivered by U.S. mail and email to:

R. Glenn Schroeder  
Schroeder Law PC  
110 Cooper Street #605  
Babylon, New York 11702  
gschroeder@schroederlawpc.com

Dated this 20th day of October, 2014.

/s/ Johanna M. Wilbert

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# EXHIBIT I-1

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In the Matter of Application Serial No. 87/751,  
520: EARTH BALANCE Published for Opposition  
March 19, 2013

BALANCE BAR COMPANY,

Opposer,

- against -

GFA BRANDS, INC.,

Applicant.

Opposition No.: 91212477

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2100 Smithtown Avenue  
Ronkonkoma, New York

June 19, 2014  
9:45 a.m.

Examination Before Trial of the  
Opposer, BY: PATRICK CORNACCHIULO, pursuant to  
Rule 30(b)(6) Deposition Notice, before  
Deborah Rozea, RPR, a Notary Public of the  
State of New York.

REALTIME REPORTING, INC.  
124 East Main Street, Suite 202  
Babylon, New York 11702  
516-938-4000  
www.realtimereporting.com

A P P E A R A N C E S:

For the Opposer:

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110 Cooper Street - #605

Babylon, New York 11702

BY: R. GLENN SCHROEDER, ESQ.

For the Applicant:

QUARLES & BRADY, LLP

411 East Wisconsin Avenue

Milwaukee, Wisconsin 53202-4497

BY: JOHANNA M. WILBERT, ESQ.

ALSO PRESENT:

LEE GROSSKREUZ HECHTEL, ESQ.

P A T R I C K   C O R N A C C H I U L O ,  
called as a witness, having been duly  
sworn by a Notary Public, was examined  
and testified as follows:

EXAMINATION BY

MS. WILBERT:

Q.        Please state your full name for  
the record.

A.        Patrick Cornacchiulo.

Q.        What is your address?

A.        2100 Smithtown Avenue,  
Ronkonkoma, New York 11779.

MS. WILBERT:    Can you mark these,  
please?

(Cornacchiulo Exhibit 1, Copy of  
six-page document entitled GFA Brands,  
Inc.'s Rule 30(b)(6) Deposition Notice  
to Opposer, Balance Bar Company, marked  
for identification.)

(Cornacchiulo Exhibit 2, Copy of  
two-page letter to Bob Harris from  
Proskauer Rose, LLP, dated July 12,  
2006, Bates stamped GFA\_EB000745 to  
GFA\_EB000746, marked for



1 Cornacchiulo

2 identification.)

3 Q. What is your job title?

4 A. Vice-President of Marketing.

5 Q. And who is your current employer?

6 A. NBTY.

7 Q. I know that I deposed you at the  
8 end of April, early May, but I would like to  
9 go over a few of the deposition ground rules.

10 A. Yup.

11 Q. So, I am going to ask you  
12 questions, and I would like you to not answer  
13 any question that you don't understand. So,  
14 if I phrase something poorly, please let me  
15 know and I will rephrase.

16 Is that fair?

17 A. Yes.

18 Q. And if you give me an answer, I  
19 am going to assume that means that you  
20 understood my question.

21 Fair?

22 A. Yes.

23 Q. Now, you just took an oath. Do  
24 you understand the oath has the same import as  
25 if you were before a judge and jury giving

1 Cornacchiulo

2 testimony?

3 A. Yes.

4 Q. Is there anything or any reason  
5 today that you couldn't do your best to honor  
6 that oath?

7 A. No.

8 Q. Are you taking any medications  
9 that would impact your ability to remember or  
10 tell the truth?

11 A. Nope.

12 Q. In your deposition earlier on May  
13 1st you gave a summary of your position as  
14 Vice-President of Marketing for NBTY.

15 Since May 1st has your position  
16 at NBTY changed in any substantial way?

17 A. No.

18 Q. Have you had any changes in your  
19 responsibilities?

20 A. No.

21 Q. When did you personally first  
22 learn of the Earth Balance trademark?

23 A. I don't know the exact date, but  
24 it was this year.

25 Q. And what were the circumstances?

1 Cornacchiulo

2 A. The circumstances were the Brand  
3 Team felt there was an infringement or  
4 potential infringement on our trademark.

5 Q. And what was the product that was  
6 brought to your attention?

7 A. Your product? The Earth Balance  
8 product?

9 Q. Yes.

10 A. It was the potential of a bar  
11 product coming out.

12 Q. And how did you learn about that?  
13 You mentioned a meeting, but what are you --

14 A. I learned about it from Erin.  
15 Erin monitors Balance Bar for me.

16 Q. And how did she learn about the  
17 potential of the bar product coming to market?

18 A. I believe she learned through our  
19 Trademark Legal Team. There was a document  
20 being submitted for a trademark.

21 Q. Was this in connection with the  
22 Trademark Application that's the subject of  
23 this lawsuit?

24 A. I think so, yes.

25 Q. Have you had any professional

Cornacchiulo

experience with the Earth Balance trademark  
other than this dispute?

A. No.

Q. When did you first personally  
learn about the Smart Balance trademark?

A. Around the same time. Some time  
during this year when the trademark questions  
came up.

Q. Have you had any professional  
experience with the Smart Balance trademark  
other than the currently pending disputes  
between GFA and Balance Bar?

A. No.

Q. I'm referring to the company as  
Balance Bar.

Is that proper or should I be  
referring to it as NBTY?

A. The brand is Balance Bar. The  
company that owns it is NBTY so...

(Hanging.)

Q. Okay.

Before you is a document that's  
been marked as Exhibit 1. It includes a case  
caption at the top, and just for my

1 Cornacchiulo

2 understanding, that identifies Balance Bar  
3 Company.

4 Does that company still exist?

5 A. I'm not sure if that's one --  
6 that may still be our legal entity, inhouse,  
7 and I would have to check on that.

8 Q. Okay.

9 A. I know we do have several  
10 companies that we still own.

11 Q. What do you understand today's  
12 dispute to be about?

13 A. The dispute is about Earth  
14 Balance producing like items within our  
15 categories, the bar items. That was the major  
16 concern for us.

17 Q. Were you personally involved in  
18 the decision to file the Notice of Opposition  
19 which was filed in September of 2013?

20 A. No.

21 Q. Do you know who was?

22 A. I can't recall the gentleman's  
23 name.

24 Q. Was it an attorney or was it  
25 somebody on the business side?

1 Cornacchiulo

2 A. I'm not sure.

3 Q. Do you know what the reason was  
4 for filing this Notice of Opposition?

5 A. The reason for filing was that  
6 there was, Earth Balance was submitting for  
7 producing, potentially producing trademarks  
8 within the bar category, the nutrition bar  
9 category.

10 So, we opposed against that.

11 Q. Was there any analysis conducted  
12 before filing the Notice of Opposition to  
13 determine whether customers were likely to be  
14 confused by the expansion of the Earth Balance  
15 brand?

16 A. No.

17 Q. Exhibit 1 is the 30(b)(6)  
18 Deposition Notice for today's deposition.

19 Have you seen this Notice before  
20 today?

21 A. Yes.

22 Q. Can you confirm that you will be  
23 testifying about Topics 1 through 6, Topic 9,  
24 Topic 11 and Topics 17 through 19?

25 A. Yes.

1 Cornacchiulo

2 Q. Do you understand that for those  
3 topics you are testifying on behalf of the  
4 corporation?

5 A. Yes.

6 Q. What does that mean to you?

7 A. That means that I will be giving  
8 you all the details I know about the brands  
9 and the products in this case.

10 Q. And do you understand that  
11 because we can't depose an entire corporation  
12 you will also be speaking not just from your  
13 personal knowledge, but from information you  
14 may have learned from others or documents that  
15 you may have looked at that belong to the  
16 corporation?

17 Is that your understanding?

18 A. Yes.

19 Q. What did you do to get ready for  
20 today's deposition?

21 A. I reviewed the trademark  
22 situation, and also prior documents pertaining  
23 to other trademark infringements or potential  
24 infringements.

25 Q. Did you talk to anyone other than

1 Cornacchiulo

2 your lawyers in preparing for today's  
3 deposition?

4 A. Erin and I may have spoke about  
5 some of the history.

6 Q. Okay.

7 When did Balance Bar Company  
8 first learn of GFA's use of the Earth Balance  
9 mark?

10 A. I'm not sure of the exact date on  
11 that.

12 Q. Could you give me an approximate  
13 date of your understanding?

14 A. Approximately two years ago.

15 Q. I just handed you what's been  
16 marked as Exhibit 2.

17 (Hanging.)

18 Could you take a minute to look  
19 at that document?

20 A. Okay.

21 Q. Could you please confirm that  
22 Exhibit 2 bears the Production Number GFAEB745  
23 through 746?

24 A. I'm sorry?

25 MS. WILBERT: Could you read it



1 Cornacchiulo

2 back?

3 (Record read.)

4 A. I'm like reading up here so I'm  
5 confused.

6 Yes. Thank you.

7 Q. That's a great point for  
8 clarification.

9 As we go forward today lawyers  
10 put these numbers at the bottom in the corner  
11 on the right-hand side.

12 So, a lot of times after handing  
13 you a document my first question will be to  
14 confirm the number so that later on everybody  
15 can agree what we were looking at.

16 A. Yes.

17 Q. And can you please confirm that  
18 substantively this documents appears to be a  
19 letter from Counsel for Balance Bar to the  
20 President of GFA Brands?

21 A. Yes.

22 Q. And that this letter references  
23 the Earth Balance trademark being used on food  
24 bars in the marketplace; is that correct?

25 A. Yes, it does.

Cornacchiulo

Q. Would you agree that based on this document Balance Bar Company knew of GFA's use of the Earth Balance mark in connection with bars at least as early as 2006?

A. Yes.

Q. In preparing for your deposition today, did you do anything to gather information about the substance of Exhibit 2?

A. Pertaining to? I mean, other than reading through the documents?

Q. Yes.

Maybe a better question is: Before today have you seen Exhibit 2?

A. I don't remember seeing this exactly.

So, I may have, but I don't remember reading this one exactly.

Q. Do you have any information about the communications between Balance Bar Company and GFA that took place in the 2006 timeframe?

A. Other than what documents we received from them, that's about it.

Q. Other than this letter, are you

Cornacchiulo

aware of any other documents that consist of correspondence between GFA and Balance Bar that are dated around the 2006 time period?

A. I'm unsure.

Q. I believe during Erin's testimony a couple months ago she had referenced that NBTY today has contact with some of the original founders of Balance Bar.

Have you had any communication with the original founders about potential communications with GFA surrounding GFA's use of the Earth Balance mark?

A. I have not.

Q. Do you know if she has?

A. From what I know she may have, yes.

Q. Do you know if anybody else in the company may know more about communications between GFA and Balance Bar in the 2006 time period?

A. Our Counsel may know more.

MS. WILBERT: Can you mark this, please?

(Cornacchiulo Exhibit 3, Copy of

Cornacchiulo

two-page letter to Lucy B. Arant from  
Welsh & Katz, Ltd., dated August 25,  
2000, Bates stamped GFA\_EB000747 through  
GFA\_EB000748, marked for  
identification.)

(Handing.)

Q. I have just handed you what's  
been marked as Exhibit 3.

Before looking at it, could you  
confirm that Exhibit 3 bears Production Number  
GFAEB747 through 748.

A. Yes.

Q. Could you take a moment to read  
the letter, and let me know when you are done?

A. Okay.

Q. Have you seen Exhibit 3 before  
today?

A. Not to my recollection.

Q. Do you agree that Exhibit 3  
appears to be a letter from Counsel for GFA  
Brands to, I believe, Counsel for Balance Bar  
Company?

A. Yes.

Q. And is Russ August & Kabat a

1 Cornacchiulo

2 former Counsel for Balance Bar?

3 A. I don't know. I'm not sure.

4 Q. Would you agree based on this  
5 letter that Balance Bar had knowledge of GFA's  
6 use of the Earth Balance trademark as of at  
7 least August 25th, 2000?

8 A. Yes.

9 Q. Other than Exhibits 2 and 3 are  
10 you aware of any other documents that were  
11 exchanged between GFA and Balance Bar or their  
12 Counsel regarding the use of the Earth Balance  
13 mark?

14 A. I know there are documents, but I  
15 can't specifically say which ones.

16 Q. How do you know there were  
17 documents?

18 A. Because I know that Erin and I  
19 have spoke about in the past that Balance has  
20 been through this several times with Smart  
21 Balance and Earth Balance.

22 So, I know that they've had  
23 conversations between the legal Counsels.

24 Q. Do you know if the documents you  
25 guys were discussing were the two letters or

1 Cornacchiulo

2 if there was something more?

3 A. I don't know what specifically  
4 they were but...

5 Q. And you spoke with Erin about  
6 that?

7 A. Yeah, I know that there have been  
8 conversations in the past about this, but I  
9 have not read the documents myself.

10 Q. Before we go any further, you  
11 gave deposition testimony about a month ago  
12 and in that deposition you described some  
13 documents and authenticated some records from  
14 the company.

15 Do you remember that?

16 A. Yes.

17 Q. Is there anything in the  
18 testimony that you gave at that time that you  
19 would like to correct or change with respect  
20 to documents that you identified?

21 A. No, no.

22 I mean I'm just not recalling  
23 what I read or did not read at this point in  
24 time. So...

25 Q. That's fine. I'm changing

1 Cornacchiulo

2 topics.

3 A. No, I wouldn't change anything I  
4 said, no.

5 Q. I spoke to your attorney before  
6 this deposition, and we would like to  
7 stipulate on the record for purposes of  
8 speeding the process along that the documents  
9 you authenticated on behalf of the company  
10 will be considered authentic documents for  
11 this proceeding.

12 Do you understand that?

13 A. Yes, yes.

14 Q. So, in that context is there  
15 anything that you would like to change about  
16 the testimony that you previously gave?

17 A. No.

18 MS. WILBERT: So, do we have your  
19 agreement that going forward we can use  
20 the transcript from the other opposition  
21 that we're involved in?

22 MR. SCHROEDER: That's fine. We  
23 agree to that.

24 MS. WILBERT: Can you mark this,  
25 please?

Cornacchiulo

(Cornacchiulo Exhibit 4, Copy of  
24-page document entitled Opposer's  
Objections and Responses to Applicant's  
First Set of Interrogatories, marked for  
identification.)

Q. Going back to the documents  
exchanged historically between GFA and Balance  
Bar, what's your understanding of the outcome  
of those communications?

A. My understanding was that Balance  
wasn't moving on to the other categories and  
my understandings was at this point in time  
Smart Balance and Earth Balance were not  
moving into our categories even though they  
were filing.

So, I mean that's basically it.

Q. So, is it accurate to say that  
historically the two marks have been able to  
coexist without there being customer  
confusion?

A. Within their sections, yes.

Q. I'm handing you what's been  
marked as Exhibit 4.

(Handing.)



1 Cornacchiulo

2 Could you please confirm that  
3 Exhibit 4 is titled Opposer's Objections and  
4 Responses to Applicant's First Set of  
5 Interrogatories?

6 A. Yes.

7 Q. Can you take a few minutes to  
8 look at the document?

9 A. Okay.

10 Q. My first question is going to be:  
11 Have you seen this document before today?

12 A. Yes, I have.

13 Q. Have you had a chance to review  
14 it before today?

15 A. Yes, I have.

16 Q. Do you understand the responses  
17 to be accurate?

18 A. Yes.

19 Q. Are you aware of anything that  
20 needs to be corrected or changed?

21 A. No.

22 Q. Could you please turn to Pages 20  
23 and 21. It's Interrogatory Number 22.

24 Just to summarize in this  
25 Interrogatory Response Earth Balance is

1 Cornacchiulo

2 identified as a trademark which Balance Bar  
3 did not assert trademark rights on.

4 I would like to ask you why  
5 Balance Bar decided not to assert trademark  
6 rights previously in connection with the Earth  
7 Balance mark?

8 A. I was not part of that.

9 So, my understanding is that at  
10 the time they were not within our category,  
11 and, you know, our first concern is close-in  
12 products within our category, you know, to  
13 prevent confusion within our category.

14 Q. What do you consider to be your  
15 category?

16 A. For us it's meal replacements,  
17 bars, drinks. Normally what's in the  
18 on-the-go bar category or anything close in to  
19 what we call the healthy lifestyle set.

20 Q. Would you consider milk  
21 substitutes to be a drink within the healthy  
22 lifestyle set?

23 A. No, not milk substitutes.

24 Q. Why?

25 A. It depends on where they are set

Cornacchiulo

in the store and how people perceive them for their usage.

So, I wouldn't consider those a meal replacement, no.

Q. Would you please turn to Interrogatory 15? The response to that is on Page 14.

A. Yes.

Q. Did anyone else other than Peter Wilson have any involvement in comparing GFA's Trademark Application in connection with GFA's Earth Balance Application and Balance Bar products?

A. Peter Wilson is the name I always hear.

So, I'm not sure if there was anybody else, but I believe Peter Wilson is the one who was the main point person for the Balance Bar Company.

Q. As this lawsuit has continued since Peter Wilson has left the company, has anyone in more recent times done a comparison between GFA's Earth Balance Application and the Balance Bar products?

Cornacchiulo

1  
2 A. Internally we have just looked at  
3 it, Erin and I and legal Counsel looked at  
4 what's going on and where we are at, but I  
5 wouldn't say we have done any other comparison  
6 other than what information we have been  
7 provided.

8 Q. Are you familiar with the  
9 products in the Earth Balance Application?

10 A. Yes.

11 Q. Of those products, what products  
12 does Balance Bar see as troublesome?

13 A. The Application for the bars, the  
14 nutrition bars. That's, that was the close-in  
15 issue for us.

16 Q. Are there any other products in  
17 that list that Balance Bar would be opposing?

18 A. I can't remember the full list  
19 off the top of my head.

20 Q. Do you have any personal  
21 knowledge of anyone that has expressed a  
22 belief that the goods sold by GFA Brands in  
23 connection with its Earth Balance brand were  
24 affiliated with Balance Bar?

25 A. Say again.

Cornacchiulo

Q. Do you have any personal knowledge of anyone that has expressed a belief that the goods sold by GFA Brands in connection with its Earth Balance brand were in any way affiliated with Balance Bar?

A. No, not at this time.

Q. Do you have any personal knowledge of any instances of actual confusion caused by GFA's use of the Earth Balance mark and any of the Balance Bar's products?

A. Not at this time.

Q. Do you have any personal knowledge of any instances of actual confusion caused by any party's use of the term Balance and any Balance Bar product?

A. Any Balance product in the past? Anybody who has had Balance on their product?

Q. Correct.

A. Nobody has been within our category long enough for us even to understand if there would be confusion.

So, usually we're making the opposition prior to them hitting our section or our shelf or our near-in categories.

1 Cornacchiulo

2 So, we haven't had that situation  
3 where somebody has been too close in to us.

4 Q. Can you please turn to  
5 Interrogatory, Page 4 and that's actually  
6 Interrogatory 4.

7 Now, I just asked you about your  
8 personal knowledge, and I would just like to  
9 confirm from the corporation's perspective I  
10 understand this interrogatory to state that  
11 Balance Bar has no documents, and is not aware  
12 of any instances of actual confusion between  
13 the goods currently sold by GFA and those sold  
14 by Balance Bar; is that correct?

15 A. Yes.

16 Q. This document was prepared in  
17 March of 2004.

18 Is the company aware of any  
19 instances of confusion that took place since  
20 March of 2013?

21 A. I'm not aware.

22 Q. I said 2004 in that question.  
23 Why don't I just repeat it so we can have a  
24 clean transcript.

25 The Interrogatory Responses were

1                                   Cornacchiulo

2       prepared in March of 2014.

3                           Is Balance Bar aware of any  
4       instances of confusion that took place since  
5       March of 2014?

6                   A.       No.

7                   Q.       Since learning of Earth Balance  
8       as a trademark, has Balance Bar done anything  
9       to determine or monitor whether customers are  
10      confused regarding GFA's continued use of the  
11      Earth Balance trademark on products?

12                  A.       No.

13                  Q.       Why not?

14                  A.       Again, going back to right now we  
15      don't feel that they are in our categories,  
16      and I think, you know, what we do is monitor  
17      within our categories and close in to anything  
18      that's on-the-go, grab-and-go type bars,  
19      nutrition, health and wellness.

20                        So, if it was closer we probably  
21      would have done a little more research, but  
22      right now being mainly in the dairy section  
23      that's not as much of a concern for us.

24                  Q.       You mention you monitor the  
25      category.

1 Cornacchiulo

2 What does Balance Bar do to  
3 monitor its category?

4 A. We do awareness studies. We are  
5 working on a shopper study right now.

6 You know, interaction between  
7 other products. Usage of other categories  
8 within our close-in products. So, that would  
9 be RTD's, bars and powders which is normally  
10 within the sections within our category.

11 So, we look at wellness products  
12 that those people consume, types of products  
13 they consume.

14 So, we look at all types of  
15 interactions with different products and  
16 brands and types.

17 Q. What are the awareness studies  
18 that Balance Bar does in connection with its  
19 Balance trademarks?

20 A. We do a quarterly awareness.

21 Since we purchased the company we  
22 have invested in advertising because for a  
23 long time Balance Bar was neglected.

24 So, we have invested in growing  
25 the brand and brand awareness over the last



Cornacchiulo

year and a half.

So, we are tracking those numbers to make sure our advertising is going in the right direction.

Q. And who does the quarterly trackers that you are referring to?

A. Millward Brown.

Q. And are those awareness studies the same studies that you discussed during your last deposition? They have a black cover.

A. Yes.

Q. Are there any other awareness studies that are done other than the ones with the black format?

A. No.

Q. What are the studies? You mentioned you looked at interaction with other products.

A. We are running right now a shopper study to understand, you know, how our consumers shop the category.

That is a, I will say it's a shelf study so we can understand how the

Cornacchiulo

different products interact with each other within our close-in categories.

We also ran a segmentation analysis that just tells us what types of products people consume. It's not really what other brands. It's more types of products.

So, if I consume a Balance Bar do I consume ready drinks or whatever else.

Q. What were the conclusions of those studies?

A. What we did was that showed us that Balance Bar was very highly interacted with on-the-go type products, grab-and-go. So, you know, the quick snacks, quick nutrition, healthy eating.

So, definitely that's where Balance Bar belongs.

Q. When you mentioned the healthy eating, what are some examples of other products that consumers who purchase Balance Bar would be interested in purchasing that fall within the healthy eating category?

A. The study didn't give us what they are interested in, it just gave us what

1                                   Cornacchiulo

2           they actually consume.

3                   Q.       Good correction.

4                   A.       So, I would have to go back. I  
5           couldn't tell you because our first goal was  
6           to find out, you know, how we are interacting  
7           within our category.

8                               So, close in to Balance Bar is  
9           Clif Bar. Zone is right in Balance Bar.

10                              So, we learn more about our  
11           current competition more than worry about the  
12           outside influences.

13                              What we do learn is, okay, well,  
14           what do we want to do next? Where do we want  
15           to go? What types of things are people doing  
16           within the category that they also consume  
17           when they eat Balance Bar. See what else they  
18           consume.

19                              So, it does help in new product  
20           development, but it's not really meant to be a  
21           kind of brand approach versus other brands.  
22           It's more about where do we fit? Who is close  
23           to us and how do we beat our close-in  
24           competition and how do we expand out?

25                   Q.       Who conducted that study?

1                                   Cornacchiulo

2                   A.           That was McKinsey.

3                   Q.           Do you know if that study was  
4                   given to your lawyers?

5                   A.           No.

6                                   Because it didn't really pertain  
7                   to the trademark. It just shows us eating  
8                   occasions.

9                   Q.           What were the conclusions that  
10                  Balance Bar as a company drew from the study  
11                  as far as what to do next or where to go with  
12                  marketing?

13                  A.           Right now we are focusing on the  
14                  on-the-go and wellness. So, we look at that  
15                  wellness consumer and say here, that consumer  
16                  wants cleaner, simpler ingredients.

17                                  They are label readers. So,  
18                  basically it helps us to define how we speak  
19                  to them. It's more of how do I talk to  
20                  somebody than anything else.

21                                  So, that person is "X", and here  
22                  is how I talk to them.

23                                  So, it defines the advertising,  
24                  the direction the brand goes in, the look, the  
25                  feel, the imagery and so forth.

1 Cornacchiulo

2 Q. You mentioned that the study told  
3 you that the customers are label readers.

4 How did it determine that?

5 A. There is a ton of questions and  
6 through the questions and questionnaires they  
7 will ask questions: Do you read labels?

8 I would have to go back and look  
9 exactly at what the questions were. But I  
10 know Balance and close-in brands within  
11 Balance they had a tendency to read the labels  
12 more often.

13 Q. In its Notice of Opposition  
14 Balance Bar alleges that GFA's use of the  
15 Earth Balance mark is likely to cause  
16 confusion.

17 What's that allegation based on?

18 A. It's based on if obviously they  
19 were in a bar, close-in to our category there  
20 is a couple of things: The fonts are very  
21 close.

22 We do produce other sub segments.  
23 So, if there was another Balance-type product  
24 it could be confused as our Balance.

25 So, we've done Balance Bare,

Cornacchiulo

Balance Gold, Balance Dark, Balance Pure in the past and so forth.

So, our consumers are very heavy loyalists. So, the heavy loyalists may have the tendency to believe this is just another extension of Balance. Especially, you know, if the treatments are real close in.

Q. So, the main thing is that the fonts look similar, and they are using the word Balance; is that correct?

A. Yeah, I would say those are two major issues; obviously Balance being the priority.

Q. You mentioned a number of different trademarks that the Balance Bar Company has used in the past. They all began with Balance; is that correct?

A. Yes, to my knowledge, yes.

Q. Does Balance Bar Company have any trademarks that use the word earth?

A. No.

Q. Does Balance Bar Company have any slogans that it has registered as trademarks that contain the word earth?

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A. Not to my knowledge.

MS. WILBERT: Can you mark this,  
please?

(Cornacchiulo Exhibit 5, Copy of  
document created by Nielsen entitled US  
Nutrition: Balance Bar & Pure Protein  
Snapshot Report, updated March 18th,  
2014, Bates stamped BB0003963 through  
BB0003972, marked for identification.)

(The following portion has been  
deemed confidential and bound under  
separate cover.)

A C K N O W L E D G E M E N T

STATE OF NEW YORK     )  
                                      : ss  
COUNTY OF                )

I, PATRICK CORNACCHIULO, hereby  
certify that I have read the transcript of my  
testimony taken under oath in my deposition of  
June 19, 2014; that the transcript is a true,  
complete and correct record of my testimony,  
and that the answers on the record as given by  
me are true and correct.

-----  
PATRICK CORNACCHIULO

Signed and subscribed to before  
me, this                    day  
of                               , 2014.

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Notary Public, State of New York



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- |   |                                                                                                                                                      |    |
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| 1 | Copy of six-page document<br>entitled GFA Brands, Inc.'s<br>Rule 30(b)(6) Deposition<br>Notice to Opposer, Balance<br>Bar Company                    | 3  |
| 2 | Copy of two-page letter to Bob<br>Harris from Proskauer Rose, LLP,<br>dated July 12, 2006, Bates<br>stamped GFA_EB000745 to<br>GFA_EB000746          | 3  |
| 3 | Copy of two-page letter to<br>Lucy B. Arant from Welsh &<br>Katz, Ltd., dated August 25,<br>2000, Bates stamped GFA_EB000747<br>through GFA_EB000748 | 14 |

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## -----EXHIBITS (Continued)-----

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FOR I.D.

- |   |                                |    |
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| 4 | Copy of 24-page document       |    |
|   | entitled Opposer's Objections  |    |
|   | and Responses to Applicant's   |    |
|   | First Set of Interrogatories   | 19 |
| 5 | Copy of document created by    |    |
|   | Nielsen entitled US Nutrition: |    |
|   | Balance Bar & Pure Protein     |    |
|   | Snapshot Report, updated March |    |
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(Counsel retained exhibits.)

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## C E R T I F I C A T E

STATE OF NEW YORK )

) ss.:

COUNTY OF NASSAU )

I, DEBORAH ROZEA, a Notary Public  
within and for the State of New York, do  
hereby certify:

That PATRICK CORNACCHIULO, the  
witness whose deposition is hereinbefore  
set forth, was duly sworn by me and that  
such deposition is a true record of the  
testimony given by such witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage; and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this 27th day of  
June, 2014.

-----  
DEBORAH ROZEA



Opposition No. 91212477  
BALANCE BAR COMPANY v. GFA BRANDS, INC.  
Offered by Applicant, GFA Brands, Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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In the Matter of Application Serial No. 85/751,520: EARTH BALANCE  
Published for Opposition March 19, 2013

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BALANCE BAR COMPANY,	)	
	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91212477
	)	
GFA BRANDS, INC.,	)	
	)	
Applicant.	)	
	)	

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**GFA BRANDS, INC.'S RULE 30(b)(6) DEPOSITION NOTICE  
TO OPPOSER, BALANCE BAR COMPANY**

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**PLEASE TAKE NOTICE** that pursuant to 37 CFR 2.120 *et seq.* and Federal Rule of Civil Procedure 30(b)(6), the undersigned counsel for Applicant GFA Brands, Inc. will take the deposition upon oral examination of the Opposer, Balance Bar Company ("Balance Bar"). The deposition will commence on Thursday, June 19, 2014 at 9:30 a.m. at Balance Bar Company, 2100 Smithtown Avenue, Ronkonkoma, NY 11779, or at such other time and place as the parties may agree. The deposition will take place before an officer duly authorized by law to administer oaths and take testimony and will continue from day-to-day, excluding Saturdays, Sundays, and holidays, until completed. The testimony will be recorded by stenographic means. The testimony so obtained will be used for all purposes permitted under the Trademark Rules of Practice, Federal Rules of Evidence, and the Federal Rules of Civil Procedure.



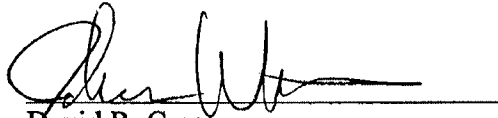
Pursuant to Federal Rule of Civil Procedure 30(b)(6), Balance Bar shall designate one or more officers, directors, managing agents or other persons, to testify on its behalf on the following matters:

1. The manner by which Balance Bar first learned of GFA Brands' use of any trademark or service mark containing the words "EARTH BALANCE."
2. The manner by which Balance Bar first learned of GFA Brands' use of any trademark or service mark containing the word "BALANCE."
3. Any consideration by Balance Bar about whether its use of the BALANCE, BALANCE GOLD, BALANCE BAR GOLD, BALANCE BAR, BALANCE BARE, or BALANCE PURE Marks (herein after "The BALANCE Marks") may or may not infringe upon any rights held by any other party or person.
4. Any instance in which anyone expressed, conveyed or exhibited a belief that GFA Brands, or the goods or services sold by GFA Brands, were in any manner endorsed by, sponsored by, or affiliated with Balance Bar or Balance Bar's use of The BALANCE Marks.
5. Any instance in which anyone expressed, conveyed or exhibited a belief that Balance Bar or products sold in connection with Balance Bar's use of The BALANCE Marks were in any manner endorsed by, sponsored by, or affiliated with anyone else using a mark containing the word "BALANCE."
6. Any facts evidencing actual confusion between the EARTH BALANCE mark and The BALANCE Marks.

7. The people and any intended people to whom goods or services identified by The BALANCE Marks are sold, including without limitation market data regarding demographics or target demographics.
8. Channels of trade through which Balance Bar sells goods or services identified by The BALANCE Marks.
9. Balance Bar's knowledge of anyone offering goods or services in connection with any trademark, service mark, trade name or product name containing the word "BALANCE" in connection with goods sold in the same stores as goods bearing The BALANCE Marks.
10. Similarity and/or differences between the EARTH BALANCE mark and the The BALANCE Marks.
11. Any instances of confusion between any other party's use of a mark containing the word "BALANCE" and sponsorship or affiliation with The BALANCE Marks.
12. The results of any poll, study or survey designed in whole or in part to measure the strength or recognition of The BALANCE Marks or any other trademark or product name containing the word "BALANCE."
13. The results of any poll, study or survey designed in whole or in part to measure confusion between any of The BALANCE Marks any other trademark, service mark, trade name or product name containing the word "BALANCE."
14. The results of any poll, study or survey designed in whole or in part to measure customer demographics in connection to the sale of goods or services bearing The BALANCE Marks.

15. Advertising and marketing of products or services using The BALANCE Marks, including any financial and other information reflecting the extent and duration of such advertising and marketing.
16. Use in commerce of products bearing The BALANCE Marks trademarks, including without limitation first use in commerce, geographic scope of use, length of use, and stores and locations in which the use occurred.
17. Opposer's knowledge of third-party use of marks containing the term BALANCE.
18. All statements of fact, allegations, and other representations made in Balance Bar's Notices of Oppositions in Proceeding No. 91212477.
19. Balance Bar's responses to GFA Brands, Inc.'s First Interrogatories to Balance Bar Company and all documents produced by Balance Bar including those produced in response to GFA Brands, Inc.'s document requests.

Dated this 7th day of May, 2014.

A handwritten signature in black ink, appearing to read 'David R. Cross', is written over a horizontal line.

David R. Cross

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Email: andrea.fowler@quarles.com

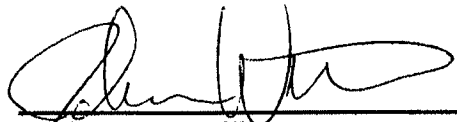
*Attorneys for Applicant GFA Brands, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on Wednesday, May 7, 2014, I served upon counsel of record the foregoing by causing the same to be delivered by U.S. mail and email to:

R. Glenn Schroeder  
Schroeder Law PC  
110 Cooper Street #605  
Babylon, NY 11702  
[gschroeder@schroederlawpc.com](mailto:gschroeder@schroederlawpc.com)

Dated this 7th day of May, 2014.

  
\_\_\_\_\_  
Johanna M. Wilbert  
Quarles & Brady LLP  
411 E. Wisconsin Avenue  
Suite 2040  
Milwaukee, WI 53202-4497  
Phone: (414) 277-5000  
Facsimile: (414) 978-8942  
[johanna.wilbert@quarles.com](mailto:johanna.wilbert@quarles.com)

Opposition No. 91212477  
BALANCE BAR COMPANY v. GFA BRANDS, INC.  
Offered by Applicant, GFA Brands, Inc.

JUL 14 '06 16:01 FR GFA BRANDS 2015686374 01 568 6374 TO 13126551501

P.02/05

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Member of the Firm

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July 12, 2006

**BY FEDERAL EXPRESS**

Mr. Bob Harris  
President  
GFA Brands, Inc.  
211 Knickerbocker Road  
Cresskill, NJ 07626

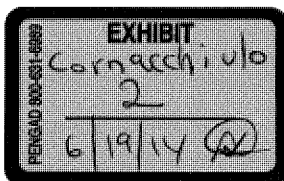
Re: Infringement of BALANCE® Trademark for Food Bars

Dear Mr. Harris:

We are outside counsel to Kraft Foods, Inc. and the Balance Bar Company ("Kraft"). Kraft is the owner of the famous BALANCE® and BALANCE BAR® brands for food and nutritional bars. The BALANCE® brand is the subject of approximately fifteen active BALANCE-formative federal registrations, most of which cover food bars, including U.S. Reg. Nos. 3,036,771 (BALANCE BAR), 2,745,850 and 2,221,309 (BALANCE), 2,868,192 (BALANCE OUTDOOR), 2,652,365 (BALANCE+), 2,636,101 (BALANCE GOLD), and 2,296,368 (40-30-30 BALANCE). Some of Kraft's BALANCE registrations are already incontestable under § 15 of the Lanham Act. Kraft also owns several pending BALANCE-formative trademark applications covering food bars.

The BALANCE® brand has become well-recognized by consumers through long, extensive, and exclusive use and advertising in commerce. As such, the BALANCE® mark is a very strong mark for food bars. In contrast, our client is not aware of a single third-party active federal trademark registration or use, other than by GFA Brands, Inc. ("GFA"), that covers food bars.

With this background in mind, Kraft recently learned that GFA has filed two pending BALANCE-formative U.S. trademark applications that, following amendments, cover "dried, ready to eat fruit and vegetable bars": US. Serial Nos. 78/554,482 (EARTH BALANCE) and 78/725,472 (FRUIT BALANCE). Kraft also recently learned that EARTH BALANCE food bars are now being sold in the marketplace, including in supermarkets that already carry Kraft's



HIGHLY CONFIDENTIAL

GFA\_EB000745

**PROSKAUER ROSE LLP**

Mr. Bob Harris  
July 12, 2006  
Page 2

BALANCE food bars. We note the EARTH BALANCE Statement of Use recently filed in the U.S. Patent and Trademark Office that alleges a November 1, 2005 first use in commerce date.

In view of Kraft's rights in the well-known and extremely valuable BALANCE® brand for food bars, Kraft is concerned about the consumer confusion that will be caused by GFA's EARTH BALANCE and FRUIT BALANCE food bars. Although Kraft inadvertently missed the opposition period for the EARTH BALANCE mark, it is Kraft's intention to petition to cancel this registration in the PTO, should the parties not be able to resolve this matter before the mark matures into a registration. Similarly, it is Kraft's intention to oppose the FRUIT BALANCE application once it is published. Kraft is also considering all other options at its disposal to protect and enforce its BALANCE® brand for food bars.

In this context, I enclose here an August 25, 2000 cease and desist letter from GFA's outside counsel to Kraft, which alleges that consumer confusion, deception, or mistake would result from Kraft's use of BALANCE and GFA's use of EARTH BALANCE on similar goods. There is no legitimate basis to take a contrary position now that it is GFA that is the second-comer to the marketplace for Kraft's core product for the BALANCE® brand, namely, food bars.

As you may know, Kraft and GFA were able to amicably resolve the trademark conflict that was the subject of GFA counsel's August, 2000 letter. With that background in mind, we offer you the opportunity to rectify this matter by providing us with your prompt written assurances, to be received no later than July 26, 2006, that GFA has immediately ceased all uses of EARTH BALANCE, FRUIT BALANCE, and any other BALANCE-formative marks in connection with food bars, and will not use any BALANCE-formative marks at any point in the future in connection with food bars. We also seek your assurances that GFA will expressly abandon its EARTH BALANCE and FRUIT BALANCE applications, and will not seek to register any BALANCE-formative trademarks that cover food bars in the future.

We look forward to your prompt written response.

Sincerely,

  
Brendan J. O'Rourke

Enclosure

cc: Demetra Merikas, Esq., Kraft Foods, Inc.



Opposition No. 91212477  
BALANCE BAR COMPANY v. GFA BRANDS, INC.  
Offered by Applicant, GFA Brands, Inc.

JUL 14 '06 16:02 FR GFA BRANDS 2015686374 01 568 6374 TO 13126551501

P.04/05

**WELSH & KATZ, LTD.**

*Attorneys at Law*

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August 25, 2000

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\* ALSO ADMITTED IN DISTRICT OF COLUMBIA

Via Federal Express

Lucy B. Arant  
Russ August & Kabat  
12424 Wilshire Blvd.  
Los Angeles, CA 90025

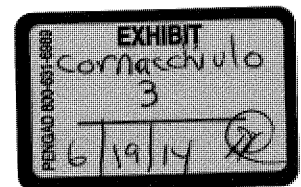
Re: BALANCE (Balance Bar Company)  
U.S. Serial No.: 75/774542

Dear Ms. Barant:

We represent GFA Brands, Inc., the owner of the mark SMART BALANCE® for which GFA Brands owns United States Registrations Nos. 2,200,663 and 2,276,285. GFA Brands also owns the mark EARTH BALANCE® for which it owns United States Registration No. 2,237,867.

The SMART BALANCE® and EARTH BALANCE® marks have been used in connection with the marketing and sale of a number of products, including margarine, mayonnaise, cheese, shortening, cooking spray and oil. GFA Brands' SMART BALANCE® and EARTH BALANCE® marks are symbolic of extensive goodwill and consumer recognition built up through substantial amounts of time and effort in advertising and promotion.

It has come to our attention that Balance Bar Company is seeking to register the mark BALANCE (Serial No. 75-774542) for a number of products, including cheese, dairy based beverages, dips, butter, breakfast cereals and snack foods. It is not clear from



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GFA\_EB000747

Lucy B. Aarant  
August 25, 2000  
Page 2

the limited trademark information we obtained whether Balance Bar has made use of BALANCE in commerce. However, use by Balance Bar of the BALANCE mark would cause confusion, deception or mistake among consumers. This likelihood of confusion gives rise to liability for trademark infringement and unfair competition under federal and state law. GFA Brands also believes that Balance Bar's use and registration of this name tends to dilute the distinctiveness of GFA Brands' BALANCE marks and could diminish their value and the goodwill associated with the marks.

We have brought GFA Brands' BALANCE marks to your attention at this time with the intention of avoiding an opposition or other legal proceedings. However, GFA Brands considers the infringement of its valuable trademark rights extremely serious and will take all available legal actions, including the filing of an opposition to protect and enforce its rights.

On behalf of GFA Brands, we kindly request that Balance Bar provide us, within fourteen (14) days of the date of mailing of this letter, with written assurances that it will not adopt or use BALANCE or pursue registration of BALANCE or any other confusingly similar variation thereof and will agree to expressly abandon application No. 75-774542.

Sincerely,

WELSH & KATZ, LTD.

By:

  
John L. Ambrogio, Esq.

JLA/skb

cc: Robert Harris  
Daniel R. Cherry, Esq.

\*\* TOTAL PAGE.005 \*\*

HIGHLY CONFIDENTIAL

GFA\_EB000748

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application Serial No. 85/751,520  
Filed: October 11, 2012  
Published for Opposition on March 19, 2013  
Trademark: EARTH BALANCE

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BALANCE BAR COMPANY,

Opposer,

v.

GFA BRANDS, INC.,

Applicant.

---

Opposition No. 91212477

**OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF  
INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Balance Bar Company, by and through its undersigned counsel, hereby submits the following objections and responses to Applicant GFA Brands, Inc.'s First Set of Interrogatories.

**GENERAL OBJECTIONS**

These general objections apply to each Interrogatory and thus, for convenience, are not repeated after each Interrogatory, but rather are set forth herein and are hereby incorporated into each response.

1. Opposer objects to Applicant's Definitions, Instructions, and Interrogatories ("Applicant's Interrogatories") to the extent that they are overbroad, unduly burdensome, oppressive, or seek information that is:



- a. beyond the scope of discovery permitted under the Federal Rules of Civil Procedure, the Trademark Rules of Practice, and/or any Orders that the Board issues in connection with this proceeding (including schedules);
- b. not in Opposer's possession, custody, or control;
- c. not relevant to any party's claims or defenses; or
- d. not reasonably calculated to lead to the discovery of admissible evidence.

2. Opposer objects to Applicant's Interrogatories to the extent that they seek the disclosure of information protected from discovery by the attorney-client privilege, attorney work-product doctrine, common interest privilege, or by any other privilege or immunity under federal or state statutory, constitutional, or common law. The inadvertent production or identification of any document or documents that contain information that is privileged, that were prepared in anticipation of litigation or trial, or that are otherwise immune from discovery, shall not constitute a waiver of any privilege or any ground for objecting to discovery with respect to such document, the subject matter thereof, or the right of Opposer to object to the use of any such document or information during any subsequent proceeding, hearing, or trial. Nothing in any response shall be construed as a waiver of any such privilege.

3. Opposer objects to Applicant's Interrogatories to the extent they are vague, ambiguous, unclear, or susceptible to multiple interpretations.

4. Opposer objects to Applicant's Interrogatories to the extent they purport to require Opposer to reach a legal conclusion about any issue, document, thing, or event, and/or are more properly the subject of expert testimony.

5. Opposer objects to Applicant's Interrogatories to the extent they seek documents or ask for information not "reasonably accessible" within the meaning of Federal Rule of Civil

Procedure 26(b)(2)(B).

6. Opposer objects to the use of "any" or "all" in Applicant's Interrogatories as overbroad, unduly burdensome, oppressive, and beyond the obligations imposed by the Federal Rules of Civil Procedure.

7. Opposer provides these responses and objections subject to further discovery in this action and further verification and research. The information provided herein is based on Opposer's present knowledge, information, and belief. Opposer reserves the right to supplement, amend, modify, or correct all or any part of any response provided herein, and reserves the right to object to the admissibility of all or any part of the responses provided herein.

8. In responding to Applicant's Interrogatories, Opposer does not concede the admissibility or relevance of the information, documents, or things sought, Opposer's responses are given subject to and without waiving any objections as to the relevance or admissibility of the requested information.

9. Opposer objects to Applicant's Interrogatories to the extent that they seek confidential and/or proprietary information.

10. The applicable foregoing general objections are incorporated into each of the specific objections below. The stating of a specific objection or response shall not be construed as a waiver of any general or specific objections.

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify the people most knowledgeable about your sales, advertising and promotion of products sold in connection with the BALANCE marks at issue.

**RESPONSE TO INTERROGATORY NO. 1:** Subject to the foregoing general objections,

Opposer responds as follows: Erin Lifeso, Dennis Tortora, Peter Wilson and Patrick Cornacchiulo.

**INTERROGATORY NO. 2:** Identify the people most knowledgeable about your adoption, licensing, and assignment of the BALANCE marks at issue.

**RESPONSE TO INTERROGATORY NO. 2:** Subject to the foregoing general objections,

Opposer responds as follows: Peter Wilson.

**INTERROGATORY NO. 3:** Identify all documents in your possession that reflect or refer to (a) Applicant; (b) this Opposition proceeding; (c) Applicant's Marks; or (d) any products or services sold, marketed or distributed by Applicant in connection with its marks.

**RESPONSE TO INTERROGATORY NO. 3:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it seeks documents that are protected by the attorney-client privilege and work product doctrine.

Subject to the foregoing general and specific objections, Opposer responds as follows: Opposer's documents include the application file for the above-referenced mark, pleadings from this Opposition proceeding, information from Applicant's website, and documents produced by Applicant in Opposition Proceeding No. 91196964.

**INTERROGATORY NO. 4:** Identify all documents and set forth with specificity all facts related to any instance where a person or entity has been confused, mistaken, and/or deceived as to the origin of goods or services as advertised or sold by GFA or as to the relationship to or any affiliation between GFA and Opposer. For each such instance, provide the date the instance occurred, the identity of the people or entities involved, and a detailed description of the circumstances of such confusion, mistake, or deception.

**RESPONSE TO INTERROGATORY NO. 4:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it seeks documents that are protected by the attorney-client privilege and work product doctrine.

Subject to the foregoing general and specific objections, Opposer responds as follows:

Applicant's goods at issue are the subject of an intent-to-use trademark application and are not currently being advertised or sold by GFA. Opposer has no documents and is not aware of any known instances of actual confusion between the goods currently sold by GFA and those sold by Opposer.

**INTERROGATORY NO. 5:** Describe your intentions or business plans regarding use of Opposer's Marks in connection with any product or service.

REDACTED

Opposer designates this Response as **CONFIDENTIAL - SUBJECT TO  
PROTECTIVE ORDER.**

**INTERROGATORY NO. 6:** Describe how Opposer distributes products sold in connection with Opposer's Marks.

**RESPONSE TO INTERROGATORY NO. 6:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer objects to this Interrogatory as ambiguous. Subject to the foregoing general and specific objections, Opposer responds as follows: Opposer distributes products sold in connection with Opposer's Marks through distributors, brokers, retailers, online purveyors, and wholesalers located throughout the United States.

**INTERROGATORY NO. 7:** Describe the manner in which products sold in connection with Opposer's Marks are marketed and sold.

REDACTED



## REDACTED

Opposer designates this Response as **CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.**

**INTERROGATORY NO. 8:** Identify any and all trademarks for food products or nutritional supplements containing the term BALANCE of which Opposer has knowledge.

**RESPONSE TO INTERROGATORY NO. 8:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it is ambiguous. Subject to the foregoing general and specific objections, Opposer responds as follows: Opposer has knowledge of and took appropriate action regarding the following food products or nutritional supplements containing the term BALANCE: Smart Balance, Earth Balance, Helping People With Diabetes Find Balance, Vital Balance, Balance Optimize Support System/Balance Optimize Support, Thyro-Balance, Equol Balance, Balanced Nutrition Bars, Carb Balance, Toddler Balance/Baby Balance, Neways Extreme Balance/Extreme Balance/Balance, Hearty Balance, Balance Beam Bar/Balance Beam, Ultimate Balance, Balanced/Balanced Foods, Balanced the Total Nutritional Drink, Flow Balance/Triple Balance, Balance Bio 3/Balance Bio 3 Reduce, Lighter Life Life in Balance, Pep2Balance, Simply Balanced, and Phresh Balance.

**INTERROGATORY NO. 9:** Identify any market study, analysis, survey (formal or informal), or public opinion poll performed by or for Opposer reflecting or referring to Opposer's Marks in connection with any product or service.

REDACTED

Opposer designates this Response as **HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.**

**INTERROGATORY NO. 10:** Identify any market study, analysis, survey (formal or informal), or public opinion poll performed by or for Opposer reflecting or referring to Applicant's Marks in connection with any product or service.

**RESPONSE TO INTERROGATORY NO. 10:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it seeks documents that are protected by the attorney-client privilege and work product doctrine. Subject to the foregoing general and specific objections, Opposer responds as follows: Opposer

has not performed any market study, analysis, survey (formal or informal), or public opinion poll reflecting or referring to Applicant's Marks.

**INTERROGATORY NO. 11:** If Opposer has ever considered, or is presently considering, expanding the products and/or services in connection with which it uses Opposer's Marks:

- a. Identity the goods and/or services Opposer was or is considering offering in connection with Opposer's Marks;
- b. Identity the person or persons making such consideration, and the date such consideration was made; and
- c. State the outcome of such consideration.

REDACTED

REDACTED

Opposer designates this Response as CONFIDENTIAL - SUBJECT TO

PROTECTIVE ORDER.

**INTERROGATORY NO. 12:** Identify each and every product or service ever offered or provided by Opposer in commerce in the United States in connection with Opposer's Marks, and for each product or service state:

- a. The date on which Opposer commenced offering or providing such product or service:
- b. The dates on which Opposer discontinued offering or providing any such product or service in commerce and the dates, if any, on which Opposer resumed offering any previously-discontinued product or service; and
- c. The sales of each product or service offered or provided in connection with Opposer's Marks, by unit and total dollar value of sales of each product or service for each year since the first use thereof.

REDACTED

REDACTED

REDACTED

Opposer designates this Response as TRADE SECRET/COMMERCIALLY  
SENSITIVE - SUBJECT TO PROJECTIVE ORDER.

**INTERROGATORY NO. 13:** Identify the target customer for each product or service offered for sale in connection with the BALANCE marks at issue.

REDACTED

REDACTED

Opposer designates this Response as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.

**INTERROGATORY NO. 14:** State how and when Opposer first obtained knowledge of Applicant's Marks or any use thereof, and identify each person connected or associated with Opposer who first learned of such use.

**RESPONSE TO INTERROGATORY NO. 14:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it seeks information that is protected by the attorney-client privilege and work product doctrine. Opposer further objects to this Interrogatory on the grounds that it is not relevant to any party's claims or defenses in this proceeding. Subject to the foregoing general and specific objections, Opposer responds as follows: Opposer first obtained knowledge of Applicant's Mark based on the filing of the above-reference trademark application on or about October 11, 2012. The persons connected or associated with Opposer who first learned of the above-referenced application was Peter Wilson.

**INTERROGATORY NO. 15:** If Opposer has ever conducted a comparison between any product or service sold, marketed or distributed by Applicant in connection with Applicant's Marks and any product or service offered by Opposer:

- a. Identify the product(s) or service(s) compared;
- b. Identify all documents relating to such comparison;
- c. Identify the person(s) who performed it;

- d. Identify the date(s) such comparison was made; and
- e. State the outcome of the comparison.

**RESPONSE TO INTERROGATORY NO. 15:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it seeks documents that are protected by the attorney-client privilege and work product doctrine. Opposer further objects to this Interrogatory as ambiguous. Subject to the foregoing general and specific objections, Opposer responds as follows: Opposer compared the goods listed in Applicant's intent to use trademark application for EARTH BALANCE with the goods sold by Opposer under the BALANCE trademarks. The person at Opposer involved in the comparison was Peter Wilson. The outcome of the comparison was the decision to file the present opposition proceeding.

**INTERROGATORY NO. 16:** Describe all channel(s) of trade by and through which Opposer has ever offered, sold, marketed or distributed any goods or services in connection with Opposer's Marks and the dates during which Opposer used those channels of trade.

REDACTED



REDACTED

Opposer designates this Response as CONFIDENTIAL - SUBJECT TO  
PROTECTIVE ORDER.

**INTERROGATORY NO. 17:** For each year since and including the date of first use, separately state the total dollar amount expended on advertising and/or promotion of the products or services offered, sold, marketed or distributed by Opposer in connection with Opposer's Marks and identify all documents which relate to such expenditures.

REDACTED

REDACTED

Opposer designates this Response as TRADE SECRET/COMMERCIALLY

SENSITIVE - SUBJECT TO PROTECTIVE ORDER.

**INTERROGATORY NO. 18:** For each and every license, agreement or other permission Opposer has ever granted to any other person or entity to use any mark incorporating the word "BALANCE," or any derivation of that word, by itself or in combination with any other word or phrase, identify:

- a. each person or entity;
- b. the date such license or permission commenced;
- c. whether the license or permission was oral or written;
- d. any compensation to be paid to you for such license or permission; and
- e. the methods by which you monitor compliance with such license and/or permission.

REDACTED

REDACTED

Opposer designates this Response as HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.

**INTERROGATORY NO. 19:** If Opposer conducted, or had conducted for it, a search or investigation of any records, such as, but not limited to, the United States Patent and Trademark Office records, state trademark records, trademark or trade publications, electronic databases, business directories or the records of any trademark or service organization, to ascertain the registrability of any mark containing the term BALANCE or ascertain whether any mark containing the term BALANCE might infringe the trademark rights of others, for each such search or investigation:

- a. State the date it was made;
- b. Identify the person who performed it;
- c. Identify the person who requested it;
- d. Identify the name and/or location of each set of records searched or investigated; and
- e. Provide the registration number or other means of identification of each mark uncovered that was found to possibly conflict with Applicant's Marks.

**RESPONSE TO INTERROGATORY NO. 19:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it seeks information that is protected by the attorney-client privilege and work product doctrine. Opposer further objects to this Interrogatory as ambiguous. Subject to the foregoing general and specific objections, Opposer responds as follows: Opposer is in possession of a Thomson

CompuMark search report dated June 11, 2010 directed to the mark BALANCE BAR and a Thomson CompuMark search report dated February 9, 2012 directed to the mark BALANCE.

**INTERROGATORY NO. 20:** Identify and describe each instance in which a person or entity has objected to or expressed reservation or concern regarding Opposer's use or attempt to register Opposer's Marks and, in particular, describe the nature of the objection, reservation and/or concern.

**RESPONSE TO INTERROGATORY NO. 20:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory as ambiguous. Subject to the foregoing general and specific objections, Opposer responds as follows: Opposer is not aware of any objection, reservation or concern expressed by a person or entity regarding Opposer's use or registration of Opposer's Marks.

**INTERROGATORY NO. 21:** Has Opposer ever been a party to any litigation or administrative proceeding, other than the present matter, involving any of the BALANCE marks at issue? If so, state the circumstances surrounding the case or proceeding including, without limitation, the name of the parties, the name of the court or agency in which it was filed, the date of the filing, the file number, Opposer's status in the proceeding, the marks involved, and the ultimate disposition of the proceeding.

**RESPONSE TO INTERROGATORY NO. 21:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it seeks information that is publicly available. Opposer further objects to this Interrogatory on the grounds that it is not relevant to any party's claims or defenses in this proceeding. Subject to the foregoing general and specific objections, Opposer responds as follows: Opposer has been a

party in the following opposition or cancellation proceedings in the U.S. Patent and Trademark Office involving Opposer's Marks:

- (1) Balance Bar Company v. Metagenics Inc. - Opposition Nos. 91115723 and 91116290
- (2) Balance Bar Company v. BioAdvantex Pharma Inc. - Cancellation No. 92031797
- (3) Balance Bar Company v. Balance Nutrition, LLC - Cancellation No. 92028520
- (4) Balance Bar Company v. Malt-O-Meal Company - Cancellation No. 92028885
- (5) Balance Bar Company v. Neways. inc. - Cancellation No. 92040810
- (6) Balance Bar Company v. Corporacion Industrial Alimenticia, S.A. de C.V. -  
Opposition Nos. 91188830 and 91188840
- (7) Balance Bar Company v. Pharmavite LLC - Opposition No. 91188832
- (8) Balance Bar Company v. Mind Mine - Opposition No. 91192572
- (9) Balance Bar Company v. Tiens Group Co., Ltd. - Opposition Nos. 91193619 and  
91193620
- (10) Balance Bar Company v. DSM IP Assets B.V. - Opposition No. 91191491
- (11) Balance Bar Company v. Lighterlife UK Limited - Opposition No. 91197149
- (12) Balance Bar Company v. Nutrition 21, Inc - Cancellation No. 92042131
- (13) Balance Bar Company v. Feel Good Production Company - Opposition No. 91117669
- (14) Balance Bar Company v. E. Excel International, Inc. - Opposition No. 91117259
- (15) Balance Bar Company v. PR Nutrition - Opposition No. 91118330
- (16) Balance Bar Company v. Enrich Corporation - Opposition No. 91116502
- (17) Balance Bar Company v. Vitamin Research Products, Inc. - Opposition No. 91115286
- (18) Balance Bar Company v. Vitamin Research Products, Inc. - Opposition No. 91115300
- (19) Balance Bar Company v. Jarrow Formulas, Inc - Opposition No. 91114128

- (20) Balance Bar Company v. The Fruitful Yield, Inc - Opposition No. 91112835
- (21) Balance Bar Company v. Radiant Life Systems LLC - Opposition No. 91112925
- (22) Balance Bar Company v. Mczand Herbal, Inc. - Opposition No. 91113225
- (23) Balance Bar Company v. Takang Industry Co., Ltd. - Opposition No. 91111035
- (24) Balance Bar Company v. Wisconsin Pharmacal Company, Inc - Opposition No. 92027576
- (25) Balance Bar Company v. Doctor pHresh Nutritionals, L.L.C. - Opposition No. 91203829
- (26) Balance Bar Company v. GFA Brands, Inc. - Opposition No. 91196954

**INTERROGATORY NO. 22:** Has Opposer ever known of a United States trademark registration, pending application for trademark registration, or third party use of a mark that contained or contains the word "BALANCE," or any derivation of that word, by itself or in combination with any other word or phrase and not acted upon any assertion of rights? If the answer is yes, describe each instance and the reason for not asserting any right.

**RESPONSE TO INTERROGATORY NO. 22:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the grounds that it is not relevant to any party's claims or defenses in this proceeding. Opposer further objects to this Interrogatory on the ground that it not limited as to the time period for which information is sought. Opposer also objects to this Interrogatory on the ground that it seeks information that is protected by the attorney-client privilege and work product doctrine. Subject to the foregoing general and specific objections, Opposer responds as follows: Opposer regularly monitors and reviews third party applications and uses of marks containing the word BALANCE and makes determinations on whether to take action. Opposer has known of U.S. applications or

registrations that contain the word "Balance" and not asserted any rights including: Smart Balance, Earth Balance, Sweet & Balance, Smartmare Balance, and Balance Factor.

**INTERROGATORY NO. 23:** Please identify each person or entity who is known to have relevant knowledge of facts concerning any allegation set forth in the Notice of Opposition or the Answer thereto.

**RESPONSE TO INTERROGATORY NO. 23:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it seeks information that is protected by the attorney-client privilege and work product doctrine. Subject to the foregoing general and specific objections, Opposer responds as follows: Peter Wilson, Dennis Tortora, Erin Lifeso and Patrick Cornacchiulo.

**INTERROGATORY NO. 24:** Identify the people who were consulted about, provided information for, or participated in preparing Opposer's responses to these interrogatories.

**RESPONSE TO INTERROGATORY NO. 24:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it seeks information that is protected by the attorney-client privilege and work product doctrine. Subject to the foregoing general and specific objections, Opposer responds as follows: Erin Lifeso, Patrick Cornacchiulo and Lee Grosskreuz Hechtel.

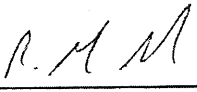
**INTERROGATORY NO. 25:** Identify the people who were consulted about, provided documents for, or otherwise participated in preparing Opposer's responses to Applicant's first set of document requests.

**RESPONSE TO INTERROGATORY NO. 25:** Opposer objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the ground that it seeks information that is protected by the attorney-client privilege and work product doctrine. Subject to the foregoing general and specific objections, Opposer responds as follows: Erin Lifeso, Patrick Cornacchiulo and Lee Grosskreuz Hechtel.

Respectfully submitted,

BALANCE BAR COMPANY

Dated: 21 March 2014

By:   
\_\_\_\_\_  
R. Glenn Schroeder  
Schroeder Law PC  
110 Cooper Street #605  
Babylon, New York 11702  
Telephone: (631) 649-6109  
Facsimile: (631) 649-8126

Attorney for Opposer



### VERIFICATION

I, Patrick Cornacchiulo, declare that I have read the foregoing **OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES**; that these answers were prepared with the assistance of knowledgeable representatives of Balance Bar Company; that these answers, subject to inadvertent or undiscovered errors, are based on, and therefore limited by, the records and information still in existence, presently recollected and thus far discovered in the course of preparation of these answers; that Balance Bar Company reserves the right to make changes in these answers if it appears at any time that omissions or errors have been made therein or that more accurate information is available; and, that subject to the limitations set forth herein, these answers are true to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

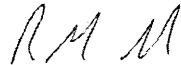
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Patrick Cornacchiulo  
Title: VP of Sport Nutrition

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES** has been served via e-mail and first-class mail this 21st day of March, 2014 upon the following:

Johanna M. Wilbert, Esq.  
Quarles & Brady LLP  
411 East Wisconsin Avenue  
Suite 2040  
Milwaukee, Wisconsin 53202-4497  
johanna.wilbert@quarles.com



---

R. Glenn Schroeder



nielsen  
.....

# US NUTRITION: BALANCE BAR & PURE PROTEIN SNAPSHOT REPORT

UPDATED MARCH 18<sup>TH</sup>, 2014

TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003963

## BRIEF OVERVIEW OF BASES FACTORS FOR SUCCESS

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003965

REDACTED

TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003966

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003967

An abstract graphic on the left side of the slide. It features a series of concentric, curved lines in various colors (blue, green, yellow, red, purple) that fan out from a vertical black bar on the left. Several colored dots (yellow, green, purple, red) are placed along these lines, with thin lines connecting some of them.

# Balance<sup>®</sup>bar

## CONCEPT OVERVIEW



REDACTED



TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003969

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003970

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003971

REDACTED



TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003972



nielsen

# US NUTRITION: WATER ENHANCERS SNAPSHOT REPORT

UPDATED APRIL 7<sup>TH</sup>, 2014



Squeeze #79117

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003974

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003975

REDACTED



TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003976



REDACTED

TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003977

REDACTED



TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003978

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003979

REDACTED



TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003980

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003981

REDACTED



TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003982

REDACTED

TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003983

REDACTED

TRADE SECRET/COMMERCIALY SENSITIVE

BB0003984



REDACTED

TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003985

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003986

REDACTED



TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003987

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003988

REDACTED

TRADE SECRET/COMMERCIALLY SENSITIVE

BB0003989

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003990

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003991

REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003992



REDACTED



TRADE SECRET/COMMERCIALY SENSITIVE

BB0003993



EXHIBIT  
Corgacchulo  
7  
6/19/14

GFA\_EB001754



5 count

push to  
open

Simply  
balanced™

**nut & seed bars**

made with mixed nuts,  
sunflower  
& pumpkin seeds



Serving suggestion

NET WT 6.2 OZ (175g) / 5—1.2 OZ (35g) BARS

BEET BY COMPANY  
100% ORGANIC  
5-1.2 OZ (35g)

Opposition No. 91212477  
BALANCE BAR COMPANY v. GFA BRANDS, INC.  
Offered by Applicant, GFA Brands, Inc.

Simply Balanced, Grocery, DVM : Target



Target DVM Grocery Simply Balanced

narrow by

- + type
- + brand



views: small medium large

sort by: best seller

results 1 - 60 of 238 page 1 of 4 >



quick info

see store for price  
Simply Balanced All  
Natural Spinach &  
Garlic Chick...  
Simply Balanced  
Not sold online  
Sold in stores  
★★★★★ (7)

compare



quick info

\$7.99 online price  
Simply Balanced  
Organic Pure Maple  
Syrup 12 oz  
Simply Balanced  
Not sold online  
Sold in stores  
eligible for Store Pickup

compare



quick info

\$3.44 online price  
Simply Balanced  
Freeze Dried  
Strawberry Slices 1 o...  
Simply Balanced  
Not sold online  
Sold in stores  
eligible for Store Pickup  
★☆☆☆☆ (1)

compare



quick info

\$3.44 online price  
Simply Balanced  
Freeze Dried Peach  
Slices 1.75 oz  
Simply Balanced  
Not sold online  
Sold in stores  
eligible for Store Pickup  
★★★★★ (5)

compare



quick info

see store for price  
Simply Balanced  
Organic Frozen  
Blueberries 10 oz  
Simply Balanced  
Not sold online  
Sold in stores

compare







[quick info](#)

see store for price

**Archer Farms® Simply Balanced Freeze Dried Bananas...**

Archer Farms

Not sold online

Sold in stores

★★★★ (4)

[compare](#)



[quick info](#)

see store for price

**Simply Balanced All Natural Italian Chicken Sausag...**

Simply Balanced

Not sold online

Sold in stores

★★★★ (5)

[compare](#)



[quick info](#)

see store for price

**Simply Balanced All Natural Sun-dried Tomato & Asi...**

Simply Balanced

Not sold online

Sold in stores

★★★★ (2)

[compare](#)



[quick info](#)

see store for price

**Simply Balanced Organic Frozen Strawberries 10 oz**

Simply Balanced

Not sold online

Sold in stores

[compare](#)



[quick info](#)

**\$2.99** online price

**Simply Balanced Pomegranate Fruit strips 10 ct**

Simply Balanced

Not sold online

Sold in stores

eligible for Store Pickup

[compare](#)



[quick info](#)

**\$2.99** online price

**Simply Balanced Organic White Corn Tortilla Chips...**

Simply Balanced

Not sold online

Sold in stores

eligible for Store Pickup

★★★★ (2)

[compare](#)



[quick info](#)

**\$5.99** online price

**Simply Balanced Wild Berry Fruit Strips 25 ct**

Simply Balanced

Not sold online

Sold in stores

eligible for Store Pickup

[compare](#)



[quick info](#)

see store for price

**SALE**  
**Simply Balanced Organic Broccoli Florets 16 oz**

Simply Balanced

Not sold online

Sold in stores

[compare](#)



[quick info](#)

**\$2.99** online price

**Simply Balanced Organic Yellow Corn Tortilla Chips...**

Simply Balanced

Not sold online

Sold in stores

eligible for Store Pickup

[compare](#)



[quick info](#)

**\$2.99** online price

**Simply Balanced Cherry Almond Greek Yogurt Granola...**

Not sold online

Sold in stores

eligible for Store Pickup

[compare](#)



[quick info](#)

see store for price



[quick info](#)

see store for price



[quick info](#)

**\$2.99** online price



[quick info](#)

Simply Balanced



[quick info](#)

**\$2.99** online price

Simply Balanced™ All Natural Sweet Apple Chicken S...

Not sold online  
Sold in stores

compare



+ quick info

**\$5.99** online price  
Simply Balanced  
Strawberry Fruit Strips  
25 ct

Simply Balanced  
Not sold online  
Sold in stores  
eligible for Store Pickup

compare



+ quick info

see store for price

**SALE**  
reg ~~\$2.75~~

Simply Balanced™  
DHA Omega-3 Organic  
Whole Milk .5...

Simply Balanced  
Not sold online  
Sold in stores

compare

**SALE**  
reg ~~\$2.40~~

Simply Balanced  
Organic Mixed  
Vegetables  
Simply Balanced  
Not sold online  
Sold in stores

compare



+ quick info

Simply Balanced™  
Organic Low Sodium  
Black Beans 13...

Not sold online  
Sold in stores

compare



+ quick info

Simply Balanced™  
Non-Fat Blueberry  
Fruit on the Bo...

Simply Balanced  
Not sold online  
Sold in stores

compare

Simply Balanced  
Strawberry Banana  
Twisted Fruit Ro...

Simply Balanced  
Not sold online  
Sold in stores  
eligible for Store Pickup

compare



+ quick info

**\$2.99** online price  
Simply Balanced™  
Date, Raisin and  
Soybean Fr...

Archer Farms  
Not sold online  
Sold in stores  
eligible for Store Pickup

compare



+ quick info

**\$2.29** online price  
Simply Balanced™  
Organic Fettuccine  
Pasta 16 oz

Not sold online  
Sold in stores  
eligible for Store Pickup

compare

Apple 4.93 oz  
Not sold online  
Sold in stores

compare



+ quick info

**\$2.99** online price  
Simply Balanced  
Blueberry  
Pomegranate Fruit  
Twists...

Simply Balanced  
Not sold online  
Sold in stores  
eligible for Store Pickup

compare



+ quick info

**\$2.49** online price  
Simply Balanced™  
Organic Trottole Pasta  
16 oz

Simply Balanced  
Not sold online  
Sold in stores  
eligible for Store Pickup

★★★★★ (1)

compare

Simply Balanced  
Lightly Salted Pre-  
popped Popcorn...  
Simply Balanced  
Not sold online  
Sold in stores  
eligible for Store Pickup

compare



+ quick info

**\$3.99** online price  
Simply Balanced  
Dried Montmorency  
Cherries 5 oz

Not sold online  
Sold in stores  
eligible for Store Pickup

compare


















+ quick info














































**\$10.99** online price  
Simply Balanced™  
Quinoa 30 oz

Not sold online  
Sold in stores  
eligible for Store Pickup






compare

 <p><a href="#">+ quick info</a></p> <p><b>Simply Balanced</b> Blueberry 4.93 oz Not sold online Sold in stores</p> <p><a href="#">compare</a></p>	 <p><a href="#">+ quick info</a></p> <p><b>\$2.99</b> online price <b>Simply Balanced</b> Strawberry Fruit Crispies Snack 3.0 oz Simply Balanced Not sold online Sold in stores eligible for Store Pickup ★★★★ (5)</p> <p><a href="#">compare</a></p>	 <p><a href="#">+ quick info</a></p> <p>see store for price <b>SALE</b> reg. <del>\$2.99</del> <b>Simply Balanced™</b> DHA Omega-3 Organic 2% Reduced Fat Simply Balanced Not sold online Sold in stores</p> <p><a href="#">compare</a></p>	 <p><a href="#">+ quick info</a></p> <p><b>Simply Balanced™</b> Organic Apple Berry Fruit Pouches... Not sold online Sold in stores</p> <p><a href="#">compare</a></p>	 <p><a href="#">+ quick info</a></p> <p><b>\$2.99</b> online price <b>Simply Balanced</b> Wild Berry Fruit Strips 10 ct Simply Balanced Not sold online Sold in stores eligible for Store Pickup ★★★★ (1)</p> <p><a href="#">compare</a></p>
 <p><a href="#">+ quick info</a></p> <p>see store for price <b>Archer Farms®</b> Chicken Hot Dog Simply Balanced Not sold online Sold in stores</p> <p><a href="#">compare</a></p>	 <p><a href="#">+ quick info</a></p> <p><b>Simply Balanced™ All</b> Natural Creamy Almond Butter... Not sold online Sold in stores</p> <p><a href="#">compare</a></p>	 <p><a href="#">+ quick info</a></p> <p><b>\$2.99</b> online price <b>SALE</b> reg. <del>\$3.49</del> <b>Simply Balanced™</b> Organic Berry Juice Boxes 6.75 oz... Not sold online Sold in stores eligible for Store Pickup</p> <p><a href="#">compare</a></p>	 <p><a href="#">+ quick info</a></p> <p><b>\$2.84</b> online price <b>SALE</b> reg. <del>\$2.99</del> <b>Simply Balanced</b> Apple Juice 64 oz. Not sold online Sold in stores eligible for Store Pickup</p> <p><a href="#">compare</a></p>	 <p><a href="#">+ quick info</a></p> <p>see store for price <b>SALE</b> reg. <del>\$2.99</del> <b>Simply Balanced™</b> Organic Whole Milk .5 gal Simply Balanced Not sold online Sold in stores</p> <p><a href="#">compare</a></p>
				



<p> quick info</p> <p><b>Vegetables Simply Balanced</b> Not sold online Sold in stores</p> <p> compare</p> 	<p> quick info</p> <p><b>Simply Balanced Rice Crackers-Cheese Multiseed 3.5...</b> Not sold online Sold in stores</p> <p> compare</p> 	<p> quick info</p> <p><b>\$3.99</b> online price <b>Simply Balanced Organic Wildflower Honey 12 oz</b> Simply Balanced Not sold online Sold in stores eligible for Store Pickup ★★★★★ (1)</p> <p> compare</p> 	<p> quick info</p> <p>see store for price <b>Simply Balanced Tilapia Fillets 24 oz</b> Simply Balanced Not sold online Sold in stores</p> <p> compare</p> 	<p> quick info</p> <p><b>\$5.99</b> online price <b>Simply Balanced Pomegranate Fruit Strips 25 ct</b> Simply Balanced Not sold online Sold in stores eligible for Store Pickup ★★★★★ (2)</p> <p> compare</p> 
<p> quick info</p> <p>see store for price <b>Simply Balanced Cage Free Organic Large Eggs 12 ct</b> Simply Balanced Not sold online Sold in stores ★★★★★ (1)</p> <p> compare</p> 	<p> quick info</p> <p><b>\$4.19</b> online price <b>Simply Balanced Dried Strawberries 4 oz</b> Not sold online Sold in stores eligible for Store Pickup</p> <p> compare</p> 	<p> quick info</p> <p><b>\$2.49</b> online price <b>Simply Balanced™ Organic Campanelle Pasta 16 oz</b> Not sold online Sold in stores eligible for Store Pickup</p> <p> compare</p> 	<p> quick info</p> <p>see store for price <b>SALE</b> reg <del>\$6.99</del> <b>Simply Balanced™ DHA Omega-3 Organic 2% Reduced Fa...</b> Simply Balanced Not sold online Sold in stores</p> <p> compare</p> 	<p> quick info</p> <p><b>Simply Balanced Organic Dill Weed 1.1oz</b> Not sold online Sold in stores</p> <p> compare</p> 
<p> quick info</p> <p><b>Simply Balanced™ Non-Fat Raspberry Fruit on the Bo...</b> Simply Balanced Not sold online Sold in stores ★★★★★ (1)</p> <p> compare</p> 	<p> quick info</p> <p><b>\$2.29</b> online price <b>Simply Balanced™ Organic Capellini Pasta 16 oz</b> Not sold online Sold in stores eligible for Store Pickup</p> <p> compare</p> 	<p> quick info</p> <p><b>\$1.00</b> online price <b>Simply Balanced Strawberry Watermelon Essence Wate...</b> Simply Balanced Not sold online Sold in stores eligible for Store Pickup</p> <p> compare</p> 	<p> quick info</p> <p>see store for price <b>Simply Balanced™ Wild Caught Mahi Mahi Fillets 16...</b> Simply Balanced Not sold online Sold in stores ★★★★★ (1)</p> <p> compare</p> 	<p> quick info</p> <p><b>\$2.29</b> online price <b>Simply Balanced Organic Southwestern - Style Black...</b> Simply Balanced Not sold online Sold in stores eligible for Store Pickup ★★★★★ (1)</p> <p> compare</p> 



<p>compare</p>  <p><a href="#">+ quick info</a></p> <p><b>\$5.99</b> online price Simply Balanced Dry Basmati 30 oz Not sold online Sold in stores eligible for Store Pickup</p> <p>compare</p>	<p>compare</p>  <p><a href="#">+ quick info</a></p> <p>Simply Balanced Blueberry 12.345 oz Not sold online Sold in stores</p> <p>compare</p>	<p>compare</p>  <p><a href="#">+ quick info</a></p> <p><b>\$3.49</b> online price Simply Balanced Pineapple Wedges Freeze Dried Fruit... Simply Balanced Not sold online Sold in stores eligible for Store Pickup</p> <p>compare</p>	<p>compare</p>  <p><a href="#">+ quick info</a></p> <p>see store for price <b>SALE</b> reg. \$5.99 Simply Balanced™ Organic Fat Free Skim Milk .5 gal Simply Balanced Not sold online Sold in stores ★ ★ ★ ★ ★ (1)</p> <p>compare</p>	<p>compare</p>  <p><a href="#">+ quick info</a></p> <p><b>\$2.29</b> online price Simply Balanced Chicken Tortilla Soup 17.3 oz Simply Balanced Not sold online Sold in stores eligible for Store Pickup</p> <p>compare</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

results 1 - 60 of 238

1 2 3 4 >

as you view items on Target.com, we'll keep track of them here.

my recommendations



#### Target stores

find a store  
clinic  
optical  
pharmacy  
photo  
portrait studio

#### about Target

company info & press  
careers  
investor relations  
corporate responsibility  
affiliates  
A Bullseye View  
team member services  
Bullseye Shop

#### ways to save

weekly ads  
coupons  
clearance  
all the deals

#### help

accessibility  
see all help  
track an order  
return an item  
store pickup  
shipping information  
product recalls  
size charts  
contact us

#### the REDcard

card benefits  
how to apply  
manage my REDcard



5% off  
plus everyday free shipping  
apply now

privacy policy | cookies | terms & conditions | CA privacy rights | CA transparency in supply chains act | about this site

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view all products by: womens mens baby kids home bath bedding appliances décor  
kitchen patio and garden furniture electronics toys health and beauty sports  
view by specialty: back to college black friday christmas clearance cyber monday  
halloween shop by brand favorite characters recipes Target Cartwheel coupons



Opposition No. 91212477  
BALANCE BAR COMPANY v. GFA BRANDS, INC.  
Offered by Applicant, GFA Brands, Inc.



Generated on: This page was generated by TSDR on 2014-06-16 16:23:03 EDT

Mark: EARTH BALANCE

EARTH BALANCE

US Serial Number: 85751520

Application Filing Date: Oct. 11, 2012

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Sep. 14, 2013

Publication Date: Mar. 19, 2013

### Mark Information

Mark Literal Elements: EARTH BALANCE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

### Related Properties Information

Claimed Ownership of US Registrations: 2237867, 3648468, 4112473 and others

### Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [ ] indicate deleted goods/services;
- Double parenthesis ( ( ) ) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \* identify additional (new) wording in the goods/services.

For: Butter; Butter substitutes; Cream cheese; Edible oils; Milk; Nut and seed-based snack bars; Nut butters; Nut-based milk; Peanut butter; Shortening; Soy-based snack foods; Soybean milk; Vegetable-based spreads

International Class(es): 029 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(b)

For: Cheese flavored snacks, namely, cheese curls; Cheese flavored snacks, namely, puffed cheese balls; Dough; Popcorn; Puddings; Salad dressings

International Class(es): 030 - Primary Class

U.S Class(es): 046

Class Status: ACTIVE

Basis: 1(b)

For: Soy-based beverages not being milk substitutes

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(b)

### Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: Yes

Currently ITU: Yes

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

### Current Owner(s) Information

Owner Name: GFA Brands, Inc.

Owner Address: Suite 260  
115 West Century Road  
Paramus, NEW JERSEY 07652  
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

## Attorney/Correspondence Information

### Attorney of Record

Attorney Name: Larry H. Tronco

Attorney Primary Email Address: [doCKET@hollandhart.com](mailto:doCKET@hollandhart.com)

Attorney Email Authorized: Yes

### Correspondent

Correspondent Name/Address: Larry H. Tronco  
Holland & Hart LLP  
P.O. Box 8749  
Attn: Trademark Docketing  
Denver, COLORADO 80201  
UNITED STATES

Phone: (303) 473-2873

Fax: (303) 473-2720

Correspondent e-mail: [doCKET@hollandhart.com](mailto:doCKET@hollandhart.com)

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
May 21, 2014	ATTORNEY REVOKED AND/OR APPOINTED	
May 21, 2014	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Sep. 14, 2013	OPPOSITION INSTITUTED NO. 999999	212477
Apr. 02, 2013	EXTENSION OF TIME TO OPPOSE RECEIVED	
Mar. 19, 2013	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Mar. 19, 2013	PUBLISHED FOR OPPOSITION	
Feb. 27, 2013	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Feb. 09, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 08, 2013	ASSIGNED TO EXAMINER	86337
Oct. 17, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Oct. 15, 2012	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

### TM Staff Information

TM Attorney: IMAM, AMEEN

Law Office Assigned: LAW OFFICE 113

### File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Feb. 11, 2013

## Proceedings

### Summary

Number of Proceedings: 2

### Type of Proceeding: Opposition

Proceeding Number: 91212477

Filing Date: Sep 14, 2013

Status: Pending

Status Date: Sep 14, 2013

Interlocutory Attorney: CHERYL S GOODMAN

### Defendant

Name: GFA Brands, Inc.

Correspondent Address: MARTA S LEVINE  
QUARLES & BRADY LLP  
411 E WISCONSIN AVE, SUITE 2350  
MILWAUKEE WI, 53202-4461  
UNITED STATES

Correspondent e-mail: [lm-dept@quarles.com](mailto:lm-dept@quarles.com) , [johanna.wilbert@quarles.com](mailto:johanna.wilbert@quarles.com) , [david.cross@quarles.com](mailto:david.cross@quarles.com) , [DRC@quarles.com](mailto:DRC@quarles.com) , [marta.levine@quarles.com](mailto:marta.levine@quarles.com) , [wilbert@quarles.com](mailto:wilbert@quarles.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EARTH BALANCE	Opposition Pending Plaintiff(s)	<u>85751520</u>	

Name: Balance Bar Company

Correspondent Address: R GLENN SCHROEDER  
SCHROEDER LAW PC  
110 COOPER STREET , #605  
BABYLON NY , 11702  
UNITED STATES

Correspondent e-mail: [docket@schroederlawpc.com](mailto:docket@schroederlawpc.com), [gschroeder@schroederlawpc.com](mailto:gschroeder@schroederlawpc.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
BALANCE GOLD	Renewed	<u>75854595</u>	<u>2636101</u>
BALANCE	Renewed	<u>76194400</u>	<u>2745850</u>
BALANCE BAR GOLD	Section 8 and 15 - Accepted and Acknowledged	<u>78409022</u>	<u>2999244</u>
BALANCE BAR	Section 8 and 15 - Accepted and Acknowledged	<u>78416165</u>	<u>3036771</u>
BALANCE BARE	Registered	<u>77053653</u>	<u>3436917</u>
BALANCE PURE	Registered	<u>77734900</u>	<u>3760265</u>
BALANCE	Registered	<u>85099089</u>	<u>3937988</u>
BALANCE BAR	Registered	<u>85099106</u>	<u>4062171</u>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Sep 14, 2013	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Sep 14, 2013	Oct 24, 2013
3	PENDING, INSTITUTED	Sep 14, 2013	
4	ANSWER	Oct 10, 2013	
5	STIPULATED PROTECTIVE ORDER	Feb 18, 2014	
6	TRIAL DATES REMAIN AS SET	Feb 20, 2014	
7	P MOT FOR EXT W/ CONSENT	Apr 15, 2014	
8	EXTENSION OF TIME GRANTED	Apr 16, 2014	
9	CORRECTION TO SCHEDULE	Apr 21, 2014	
10	D EXPERT DISCLOSURES	Apr 22, 2014	
11	P REBUTTAL DISCLOSURES	May 27, 2014	

**Type of Proceeding: Extension of Time**

Proceeding Number: 85751520

Filing Date: Apr 02, 2013

Status: Terminated

Status Date: Sep 15, 2013

Interlocutory Attorney:

**Defendant**

Name: GFA Brands, Inc.

Correspondent Address: MARTA S. LEVINE  
QUARLES & BRADY LLP  
411 E WISCONSIN AVE  
MILWAUKEE WI , 53202-4461  
UNITED STATES

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
EARTH BALANCE	Opposition Pending Potential Opposer(s)	<u>85751520</u>	

**Name:** Balance Bar Company

**Correspondent Address:** Keith E. Sharkin  
Dickstein Shapiro LLP  
1633 Broadway  
New York NY , 10019-6708  
UNITED STATES

**Correspondent e-mail:** [ipdocketing-ny@dicksteinshapiro.com](mailto:ipdocketing-ny@dicksteinshapiro.com)

**Associated marks**

Mark		Application Status	Serial Number	Registration Number
Prosecution History				
Entry Number	History Text	Date		Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Apr 02, 2013		
2	EXTENSION OF TIME GRANTED	Apr 02, 2013		
3	INCOMING - EXT TIME TO OPPOSE FILED	Jul 10, 2013		
4	EXTENSION OF TIME GRANTED	Jul 10, 2013		

## Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	85751520
<b>LAW OFFICE ASSIGNED</b>	LAW OFFICE 113
<b>MARK SECTION</b>	
<b>MARK</b>	EARTH BALANCE
<b>ATTORNEY SECTION</b>	
<b>ORIGINAL ADDRESS</b>	MARTA S LEVINE 139986.00241 411 E WISCONSIN AVE SUITE 2350 MILWAUKEE Wisconsin (WI) 53202-4461 US 414 277 5000 414 271 3552 tm-dept@quarles.com
<b>NEW ATTORNEY ADDRESS</b>	
<b>STATEMENT TEXT</b>	By submission of this request, the undersigned REVOKES the power of attorney currently of record, as listed above, and hereby APPOINTS the following new attorney:
<b>NAME</b>	Larry H. Tronco
<b>FIRM NAME</b>	Holland & Hart LLP
<b>INTERNAL ADDRESS</b>	Attn: Trademark Docketing
<b>STREET</b>	P.O. Box 8749
<b>CITY</b>	Denver
<b>STATE</b>	Colorado
<b>COUNTRY</b>	United States

<b>POSTAL/ZIP CODE</b>	80201
<b>PHONE</b>	(303) 473-2873
<b>FAX</b>	(303) 473-2720
<b>EMAIL</b>	docket@hollandhart.com
<b>ATTORNEY AUTHORIZED TO COMMUNICATE VIA E-MAIL</b>	YES
<b>NEW OTHER APPOINTED ATTORNEYS</b>	Scott S. Havlick; Donald A. Degnan; Wendy J. Pifher; Matthew D. Abell; Andrea Anderson; Ester Martín Maillaro; Larry H. Tronco; Andrew Roppel; Jessica A. Neville; Nadya C. Bosch; Matthew Horlacher; Amanda L. Swaim; Kazuyo Morita; Janet Shih Hajek; Darin Brown; Betsy D. Proffitt; Lynn Y. Hsu
<b>NEW CORRESPONDENCE ADDRESS</b>	
<b>NAME</b>	Larry H. Tronco
<b>FIRM NAME</b>	Holland & Hart LLP
<b>INTERNAL ADDRESS</b>	Attn: Trademark Docketing
<b>STREET</b>	P.O. Box 8749
<b>CITY</b>	Denver
<b>STATE</b>	Colorado
<b>COUNTRY</b>	United States
<b>POSTAL/ZIP CODE</b>	80201
<b>PHONE</b>	(303) 473-2873
<b>FAX</b>	(303) 473-2720
<b>EMAIL</b>	docket@hollandhart.com
<b>AUTHORIZED TO COMMUNICATE VIA E-MAIL</b>	YES
<b>OTHER APPOINTED ATTORNEY</b>	Scott S. Havlick; Donald A. Degnan; Wendy J. Pifher; Matthew D. Abell; Andrea Anderson; Ester Martín Maillaro; Larry H. Tronco; Andrew Roppel; Jessica A. Neville; Nadya C. Bosch; Matthew Horlacher; Amanda L. Swaim; Kazuyo Morita; Janet Shih Hajek; Darin Brown; Betsy D. Proffitt; Lynn Y. Hsu
<b>SIGNATURE SECTION</b>	



<b>SIGNATORY FILE</b>	
<b>ORIGINAL PDF FILE</b>	<u>hw_6323611269-131247473_2014.05.21_Rev of POA- Appt of new attys-signed.pdf</u>
<b>CONVERTED PDF FILE(S) (1 page)</b>	<u>\\TICRS\EXPORT16\IMAGEOUT16\857\515\85751520\xml8\RAA0002.JPG</u>
<b>SIGNATORY NAME</b>	Timothy R. Kraft
<b>SIGNATORY POSITION</b>	Senior Vice President, Associate General Counsel
<b>SIGNATORY PHONE NUMBER</b>	720-550-5007
<b>FILING INFORMATION SECTION</b>	
<b>SUBMIT DATE</b>	Wed May 21 13:15:34 EDT 2014
<b>TEAS STAMP</b>	USPTO/RAA-63.236.112.69-2 0140521131534158570-86219 228-500518a6cc423ceb2b5b9 c62a863dfb020dcd6495bf2f4 9b25ce69598b54a3fb6d-N/A- N/A-20140521131247473218

## **Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative**

To the Commissioner for Trademarks:

**MARK:** EARTH BALANCE

**SERIAL NUMBER:** 85751520

**The original attorney**

MARTA S LEVINE

139986.00241

411 E WISCONSIN AVE

SUITE 2350

MILWAUKEE Wisconsin 53202-4461

US

414 277 5000

414 271 3552

tm-dept@quarles.com

**Original Correspondence Address :**

MARTA S LEVINE

QUARLES & BRADY LLP

411 E WISCONSIN AVE

SUITE 2350

MILWAUKEE Wisconsin 53202-4461

US

414 277 5000

414 271 3552

tm-dept@quarles.com

By submission of this request, the undersigned REVOKES the power of attorney currently of record, as listed above, and hereby APPOINTS the following new attorney: In addition, any additional previously-appointed attorneys that are currently listed in the application are replaced with the new "Other Appointed Attorneys" listed below.

**Newly Appointed Attorney:**

Larry H. Tronco

Holland & Hart LLP

Attn: Trademark Docketing

P.O. Box 8749

Denver, Colorado 80201

United States

(303) 473-2873

(303) 473-2720

docket@hollandhart.com

**Other Appointed Attorneys:**

Scott S. Havlick; Donald A. Degnan; Wendy J. Pifher; Matthew D. Abell; Andrea Anderson; Ester Martín Maillaro; Larry H. Tronco; Andrew Roppel; Jessica A. Neville; Nadya C. Bosch; Matthew Horlacher; Amanda L. Swaim; Kazuyo Morita; Janet Shih Hajek; Darin Brown; Betsy D. Proffitt; Lynn Y. Hsu

**The following is to be used as the correspondence address:**

Larry H. Tronco  
Holland & Hart LLP  
Attn: Trademark Docketing  
P.O. Box 8749  
Denver, Colorado 80201  
United States

(303) 473-2873  
(303) 473-2720  
docket@hollandhart.com

**Original PDF file:**

hw 6323611269-131247473 . 2014.05.21 Rev of POA-Appt of new attys-signed.pdf

**Converted PDF file(s) (1 page)**

Signature File1

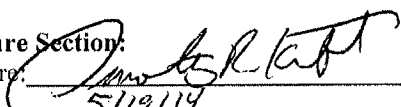
Signatory's Name: Timothy R. Kraft  
Signatory's Position: Senior Vice President, Associate General Counsel  
Signatory's Phone Number: 720-550-5007

Serial Number: 85751520  
Internet Transmission Date: Wed May 21 13:15:34 EDT 2014  
TEAS Stamp: USPTO/RAA-63.236.112.69-2014052113153415  
8570-86219228-500518a6cc423ceb2b5b9c62a8  
63dfb020dcd6495bf2f49b25ce69598b54a3fb6d  
-N/A-N/A-20140521131247473218

**Revocation of Attorney/Domestic Representative and/or Appointment of Attorney/Domestic Representative**

**Handwritten Signature**

**Signature Section:**

Signature: 

Date: 5/19/14

Signatory's Name: Timothy R. Kraft

Signatory's Position: Senior Vice President, Associate General Counsel

Signatory's Phone Number: 720-550-5007

**NOTE TO APPLICANT:** When filed as part of the electronic form (i.e., scanned and attached as an image file), include only the signature page (no declaration is required, nor should any other information from the actual revocation be included).



---

**From:** TMOOfficialNotices@USPTO.GOV  
**Sent:** Tuesday, March 19, 2013 00:41 AM  
**To:** tm-dept@quarles.com  
**Subject:** 139986.00241 Official USPTO Notification: TMOG Publication Confirmation for Serial Number 85751520

---

## TRADEMARK OFFICIAL GAZETTE PUBLICATION CONFIRMATION

**U.S. Serial Number:** 85-751,520  
**Mark:** EARTH BALANCE(STANDARD CHARACTER MARK)  
**International Class(es):** 029, 030, 032  
**Applicant:** GFA Brands, Inc.  
**Docket/Reference Number:** 139986.00241

The mark identified above has been published in the Trademark Official Gazette (TMOG) on Mar 19, 2013.

### To View the Mark in the TMOG:

1. Click on the following link or paste the URL into an internet browser:  
[http://www.uspto.gov/web/trademarks/tmog/20130319\\_OG.pdf#page=00000413](http://www.uspto.gov/web/trademarks/tmog/20130319_OG.pdf#page=00000413)
2. Locate your mark on the displayed page.

If the TMOG PDF file does not open to the page containing your mark (you must have an Adobe Reader installed on your workstation), click on the following link or paste the URL into an internet browser to review the Frequently Asked Questions about the Trademark Official Gazette: [http://www.uspto.gov/trademarks/resources/tm\\_og\\_faqs.jsp](http://www.uspto.gov/trademarks/resources/tm_og_faqs.jsp).

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the TMOG for accuracy. If any information is incorrect due to USPTO error, the applicant should immediately email the requested correction to [TMPostPubQuery@uspto.gov](mailto:TMPostPubQuery@uspto.gov). For applicant corrections or amendments after publication, please file a post publication amendment using the form available at <http://teasroa.uspto.gov/ppa/>. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

### Significance of Publication for Opposition:

Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then eleven (11) weeks after the publication date a notice of allowance (NOA) should issue. (Note: The applicant must file a Statement of Use or Extension Request within six (6) months after the NOA issues.)

To view this notice and other documents for this application on-line, go to Trademark Status and Document Retrieval at <http://tsdr.uspto.gov/>, enter the United States application serial number and select the button labeled "Documents." NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.



## UNITED STATES PATENT AND TRADEMARK OFFICE

---

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451  
[www.uspto.gov](http://www.uspto.gov)

Feb 27, 2013

### NOTICE OF PUBLICATION

- |                                           |                                                        |
|-------------------------------------------|--------------------------------------------------------|
| 1. Serial No.:<br>85-751,520              | 2. Mark:<br>EARTH BALANCE<br>(STANDARD CHARACTER MARK) |
| 3. International Class(es):<br>29, 30, 32 |                                                        |
| 4. Publication Date:<br>Mar 19, 2013      | 5. Applicant:<br>GFA Brands, Inc.                      |

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the *Official Gazette* on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the *Official Gazette* containing the publication of the mark may be obtained from:

The Superintendent of Documents  
U.S. Government Printing Office  
PO Box 371954  
Pittsburgh, PA 15250-7954  
Phone: 202-512-1800

By direction of the Commissioner.

---

**Email Address(es):**

[tm-dept@quarles.com](mailto:tm-dept@quarles.com)

---

**From:** TMOOfficialNotices@USPTO.GOV  
**Sent:** Wednesday, February 27, 2013 03:40 AM  
**To:** tm-dept@quarles.com  
**Subject:** 139986.00241 Official USPTO Notification: Issuance of Notice of Publication for Serial Number 85751520

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**NOTIFICATION OF "NOTICE OF PUBLICATION"**

Your trademark application (Serial No. 85751520) is scheduled to publish in the *Official Gazette* on Mar 19, 2013. To preview the Notice of Publication, go to <http://tdr.uspto.gov/search.action?sn=85751520>. If you have difficulty accessing the Notice of Publication, contact [TDR@uspto.gov](mailto:TDR@uspto.gov).

**PLEASE NOTE:**

1. The Notice of Publication may not be immediately available but will be viewable within 24 hours of this e-mail notification.
2. You will receive a second e-mail on the actual "Publication Date," which will include a link to the issue of the *Official Gazette* in which the mark has published.

Do NOT hit "Reply" to this e-mail notification. If you have any questions about the content of the Notice of Publication, contact [TMPostPubQuery@uspto.gov](mailto:TMPostPubQuery@uspto.gov).

**Trademark Snap Shot Publication Stylesheet**  
(Table presents the data on Publication Approval)

**OVERVIEW**

SERIAL NUMBER	85751520	FILING DATE	10/11/2012
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	IMAM, AMEEN	L.O. ASSIGNED	113

**PUB INFORMATION**

RUN DATE	02/12/2013		
PUB DATE	03/19/2013		
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE		
STATUS DATE	02/11/2013		
LITERAL MARK ELEMENT	EARTH BALANCE		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPub 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

**FILING BASIS**

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	NO	1 (a)	NO	1 (a)	NO
1 (b)	YES	1 (b)	YES	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

**MARK DATA**

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	EARTH BALANCE



MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

### CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	GFA Brands, Inc.
ADDRESS	Suite 260 115 West Century Road Paramus, NJ 07652
ENTITY	03-CORPORATION
CITIZENSHIP	Delaware

### GOODS AND SERVICES

INTERNATIONAL CLASS	029
DESCRIPTION TEXT	Butter; Butter substitutes; Cream cheese; Edible oils; Milk; Nut and seed-based snack bars; Nut butters; Nut-based milk; Peanut butter; Shortening; Soy-based snack foods; Soybean milk; Vegetable-based spreads
INTERNATIONAL CLASS	030
DESCRIPTION TEXT	Cheese flavored snacks, namely, cheese curls; Cheese flavored snacks, namely, puffed cheese balls; Dough; Popcorn; Puddings; Salad dressings
INTERNATIONAL CLASS	032
DESCRIPTION TEXT	Soy-based beverages not being milk substitutes

### GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	029	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE
INTERNATIONAL CLASS	030	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE
INTERNATIONAL CLASS	032	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE

### MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
------------------------	----

OWNER OF US REG NOS

2237867 3648468 4112473

**PROSECUTION HISTORY**

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
02/09/2013	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	004
02/08/2013	DOCK	D	ASSIGNED TO EXAMINER	003
10/17/2012	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
10/15/2012	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

**CURRENT CORRESPONDENCE INFORMATION**

ATTORNEY	Marta S. Levine
CORRESPONDENCE ADDRESS	MARTA S. LEVINE QUARLES & BRADY LLP 411 E WISCONSIN AVE MILWAUKEE, WI 53202-4461
DOMESTIC REPRESENTATIVE	NONE

# EARTH BALANCE

# NOTE TO THE FILE

SERIAL NUMBER: 85751520

DATE: 02/09/2013

NAME: aimam

## NOTE:

### Searched:

☒ Google  
☐ Lexis/Nexis  
☐ OneLook  
☐ Wikipedia  
☐ Acronym Finder  
☐ Other:

### Discussed ID with:

☐ Senior Atty  
☐ Managing Atty  
  
☐ Protest evidence reviewed

### Checked:

☐ Geographic significance  
☐ Surname  
☐ Translation  
☐ ID with ID/CLASS mailbox

### Discussed Geo. Sig. with:

☐ Senior Atty  
☐ Managing Atty

☐ Checked list of approved Canadian attorneys and agents

### Discussed file with

#### Attorney/Applicant via:

☐ phone  
☐ email

☐ Left message with  
Attorney/Applicant

☐ Requested Law Library search  
for:

☐ Issued Examiner's Amendment  
and entered changes in TRADEUPS

☐ PRINT ☐ DO NOT PRINT

☐ Description of the mark  
☐ Translation statement  
  
☐ Negative translation statement  
☐ Consent of living individual  
  
☐ Changed TRADEUPS to:

☐ Added design code in TRADEUPS  
  
☐ Re-imaged standard character  
drawing  
  
☐ Contacted TM MADRID ID/CLASS  
about misclassified definite ID

☐ OTHER:

\*\*\* User:aimam \*\*\*

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	139	62	27	21	0:01	"GFA Brands" [on]
02	12932	N/A	0	0	0:03	*{v}rth* [bi,ti]not dead [ld]
03	14333	N/A	0	0	0:01	*w{v:2}rld* [bi,ti]not dead [ld]
04	579	N/A	0	0	0:03	*globe* not dead [ld]
05	579	N/A	0	0	0:03	*globe* [bi,ti]not dead [ld]
06	1988	N/A	0	0	0:03	*b{v:2}l{v:2}n{"csz"}* [bi,ti]not dead [ld]
07	29	0	29	26	0:01	(2 3 5) and 6
08	21	0	21	19	0:01	7 not 1
09	4110	N/A	0	0	0:03	*earth* [bi,ti]not dead [ld]
10	2014885	N/A	0	0	0:03	"029" [cc]
11	1662	N/A	0	0	0:01	9 and 10
12	153725	N/A	0	0	0:08	("029" "030" "032" a b "200") [ic] not dead [ld]
13	587742	N/A	0	0	0:11	("029" "030" "032" "035" "042" a b "200") [ic] not dead [ld]
14	1209	0	1209	1093	0:01	9 and 13
15	16986	N/A	0	0	0:01	butter\$ [gs]
16	32680	N/A	0	0	0:01	cheese\$ [gs]
17	41373	N/A	0	0	0:02	milk\$ [gs]
18	35629	N/A	0	0	0:01	snack\$ [gs]
19	1820	N/A	0	0	0:02	shortening [gs]
20	20999	N/A	0	0	0:01	spread\$ [gs]
21	8328	N/A	0	0	0:01	dough\$ [gs]
22	8097	N/A	0	0	0:01	popcorn\$ [gs]
23	6006	N/A	0	0	0:02	pudding\$ [gs]
24	31907	N/A	0	0	0:01	dressing\$ [gs]
25	12126	N/A	0	0	0:01	soy\$ [gs]
26	184	0	184	175	0:01	9 and (15 16 17 18 19 20 21 22 23 24 25)
27	773	0	773	701	0:01	6 and 10

Session started 2/9/2013 12:18:41 PM

Session finished 2/9/2013 12:46:03 PM

Total search duration 0 minutes 59 seconds

Session duration 27 minutes 22 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 85751520

# EARTH BALANCE

# Trademark/Service Mark Application, Principal Register

## TEAS Plus Application

Serial Number: 85751520

Filing Date: 10/11/2012

**NOTE: Data fields with the \* are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.**

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
<b>MARK INFORMATION</b>	
*MARK	<u>EARTH BALANCE</u>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	EARTH BALANCE
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>REGISTER</b>	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	GFA Brands, Inc.
INTERNAL ADDRESS	Suite 260
*STREET	115 West Century Road
*CITY	Paramus
*STATE (Required for U.S. applicants)	New Jersey
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	07652
<b>LEGAL ENTITY INFORMATION</b>	

*TYPE	CORPORATION
* STATE/COUNTRY OF INCORPORATION	Delaware
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
*INTERNATIONAL CLASS	029
*IDENTIFICATION	Butter; Butter substitutes; Cream cheese; Edible oils; Milk; Nut and seed-based snack bars; Nut butters; Nut-based milk; Peanut butter; Shortening; Soy-based snack foods; Soybean milk; Vegetable-based spreads
*FILING BASIS	SECTION 1(b)
*INTERNATIONAL CLASS	030
*IDENTIFICATION	Cheese flavored snacks, namely, cheese curls; Cheese flavored snacks, namely, puffed cheese balls; Dough; Popcorn; Puddings; Salad dressings
*FILING BASIS	SECTION 1(b)
*INTERNATIONAL CLASS	032
*IDENTIFICATION	Soy-based beverages not being milk substitutes
*FILING BASIS	SECTION 1(b)
<b>ADDITIONAL STATEMENTS SECTION</b>	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	The applicant claims ownership of U.S. Registration Number(s) 2237867, 3648468, 4112473, and others.
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
<b>ATTORNEY INFORMATION</b>	
NAME	Marta S. Levine
ATTORNEY DOCKET NUMBER	139986.00241
FIRM NAME	Quarles & Brady LLP



<b>INTERNAL ADDRESS</b>	Attention: IP Docket
<b>STREET</b>	411 East Wisconsin Avenue
<b>CITY</b>	Milwaukee
<b>STATE</b>	Wisconsin
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	53202
<b>PHONE</b>	414 277 5000
<b>FAX</b>	414 271 3552
<b>EMAIL ADDRESS</b>	tm-dept@quarles.com
<b>AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>OTHER APPOINTED ATTORNEY</b>	Robert L. Titley, Carl R. Schwartz, and Hillary J. Wucherer
<b>CORRESPONDENCE INFORMATION</b>	
<b>*NAME</b>	Marta S. Levine
<b>FIRM NAME</b>	Quarles & Brady LLP
<b>INTERNAL ADDRESS</b>	Attention: IP Docket
<b>*STREET</b>	411 East Wisconsin Avenue
<b>*CITY</b>	Milwaukee
<b>*STATE</b> (Required for U.S. applicants)	Wisconsin
<b>*COUNTRY</b>	United States
<b>*ZIP/POSTAL CODE</b>	53202
<b>PHONE</b>	414 277 5000
<b>FAX</b>	414 271 3552
<b>*EMAIL ADDRESS</b>	tm-dept@quarles.com
<b>*AUTHORIZED TO COMMUNICATE VIA EMAIL</b>	Yes
<b>FEE INFORMATION</b>	
<b>NUMBER OF CLASSES</b>	3
<b>FEE PER CLASS</b>	275
<b>*TOTAL FEE PAID</b>	825
<b>SIGNATURE INFORMATION</b>	

* SIGNATURE	/Timothy R. Kraft/
* SIGNATORY'S NAME	Timothy R. Kraft
* SIGNATORY'S POSITION	SVP, Associate General Counsel
SIGNATORY'S PHONE NUMBER	303.652.0549
* DATE SIGNED	10/11/2012

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## **Trademark/Service Mark Application, Principal Register**

### **TEAS Plus Application**

**Serial Number: 85751520**

**Filing Date: 10/11/2012**

#### **To the Commissioner for Trademarks:**

**MARK:** EARTH BALANCE (Standard Characters, see mark)

The literal element of the mark consists of EARTH BALANCE.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, GFA Brands, Inc., a corporation of Delaware, having an address of  
Suite 260,  
115 West Century Road  
Paramus, New Jersey 07652  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

**For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 029: Butter; Butter substitutes; Cream cheese; Edible oils; Milk; Nut and seed-based snack bars; Nut butters; Nut-based milk; Peanut butter; Shortening; Soy-based snack foods; Soybean milk; Vegetable-based spreads

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

**For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 030: Cheese flavored snacks, namely, cheese curls; Cheese flavored snacks, namely, puffed cheese balls; Dough; Popcorn; Puddings; Salad dressings

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

**For specific filing basis information for each item, you must view the display within the Input Table.**

International Class 032: Soy-based beverages not being milk substitutes

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant claims ownership of U.S. Registration Number(s) 2237867, 3648468, 4112473, and others.

The applicant's current Attorney Information:

Marta S. Levine and Robert L. Titley, Carl R. Schwartz, and Hillary J. Wucherer of Quarles & Brady LLP

Attention: IP Docket  
411 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
United States

The attorney docket/reference number is 139986.00241.

The applicant's current Correspondence Information:

Marta S. Levine  
Quarles & Brady LLP  
Attention: IP Docket  
411 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
414 277 5000(phone)  
414 271 3552(fax)  
tm-dept@quarles.com (authorized)

A fee payment in the amount of \$825 has been submitted with the application, representing payment for 3 class(es).

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Timothy R. Kraft/ Date Signed: 10/11/2012

Signatory's Name: Timothy R. Kraft

Signatory's Position: SVP, Associate General Counsel

RAM Sale Number: 307

RAM Accounting Date: 10/12/2012

Serial Number: 85751520

Internet Transmission Date: Thu Oct 11 13:59:27 EDT 2012

TEAS Stamp: USPTO/FTK-50.58.161.129-2012101113592766

3872-85751520-49069c2fef61afda849eed4d3c

ceb36b93-DA-307-20121003154106988186

# EARTH BALANCE

Opposition No. 91212477  
BALANCE BAR COMPANY v. GFA BRANDS, INC.  
Offered by Applicant, GFA Brands, Inc.



Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>

ESTTA Tracking number: **ESTTA373602**

Filing date: **10/15/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

#### Opposer Information

Name	Balance Bar Company
Granted to Date of previous extension	10/17/2010
Address	115 Stevens Avenue Suite 202 Valhalla, NY 10595 UNITED STATES
Attorney information	David I. Greenbaum Edwards Angell Palmer & Dodge LLP F.D.R. Station P.O. Box 130 New York, NY 10150 UNITED STATES trademark@eapdlaw.com, dgreenbaum@eapdlaw.com Phone: 212 912 2977

#### Applicant Information

Application No	77864206	Publication date	04/20/2010
Opposition Filing Date	10/15/2010	Opposition Period Ends	10/17/2010
Applicant	GFA Brands, Inc. Suite 260 115 West Century Rd. Paramus, NJ 07652 UNITED STATES		

#### Goods/Services Affected by Opposition

Class 005.  
All goods and services in the class are opposed, namely: vitamins, supplements, vitamin enriched beverages, meal replacement bars, liquid meal replacements

#### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

#### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2745850	Application Date	01/16/2001
Registration Date	08/05/2003	Foreign Priority Date	NONE
Word Mark	BALANCE		

Design Mark	<b>BALANCE</b>
Description of Mark	NONE
Goods/Services	Class 029. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Protein based, nutrient-dense snack bars

U.S. Registration No.	2659753	Application Date	07/08/1997
Registration Date	12/10/2002	Foreign Priority Date	NONE
Word Mark	BALANCE BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/07/30 First Use In Commerce: 1999/07/30 nutritional food supplements		

U.S. Registration No.	2636101	Application Date	11/20/1999
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	BALANCE GOLD		
Design Mark	<b>BALANCE GOLD</b>		
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 2000/06/30 First Use In Commerce: 2000/06/30 SNACK BARS		

U.S. Application No.	85099089	Application Date	08/03/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BALANCE		



Design Mark	<b>BALANCE</b>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Nutritional supplements; dietary food supplements Class 030. First use: First Use: 1992/00/00 First Use In Commerce: 1992/00/00 Cereal-based, rice-based, or granola-based snack bars and snack foods

Attachments	76194400#TMSN.gif ( 1 page )( bytes ) 75854595#TMSN.gif ( 1 page )( bytes ) 85099089#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition - SMART BALANCE.pdf ( 6 pages )(81653 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/dig/
Name	David I. Greenbaum
Date	10/15/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

**NOTICE OF OPPOSITION**

Trademark Application Serial No. 77/864,206

Filed: November 3, 2009

For the Mark: SMART BALANCE

Published in the Official Gazette on April 20, 2010

-----X	
<b>Balance Bar Company,</b>	§
	§
Opposer,	§
	§
-against-	§
	§
<b>GFA Brands, Inc.,</b>	§
	§
Applicant.	§
	§
-----X	

Opposition No. \_\_\_\_\_

To: Trademark Trial and Appeal Board

As grounds of opposition, it is alleged that:

Opposer, Balance Bar Company, a Delaware corporation with a business address of 115 Stevens Avenue, Suite 202, Valhalla, NY 10595 ("Opposer"), believes it will be damaged by registration of the designation SMART BALANCE in Class 5, which is the subject of Application Serial No. 77/864,206, filed on the basis of intent-to-use by GFA Brands, Inc. ("Applicant").

1. For many years, and since long prior to the November 3, 2009 filing date of applicant's application, Opposer has engaged in the manufacture of nutritional food supplements, snack bar products, and meal replacement bars and advertised and sold them throughout the United States under its BALANCE trademark and BALANCE-formative trademarks. The BALANCE trademark has become distinctive of Opposer's goods and represents substantial goodwill built up by Opposer.

2. By virtue of the excellence of Opposer's products bearing its BALANCE trademark and as a result of Opposer's extensive promotional and sales activities, the BALANCE trademark is famous and was famous before November 7, 2009, and the public has come to identify the business and products denominated by the BALANCE trademark as being associated exclusively with Opposer.

3. In addition to Opposer's long-standing common law rights in and to the BALANCE trademark and formatives thereof, Opposer owns multiple registrations issued by the United States Patent and Trademark Office for the BALANCE trademark and variations, including, among others, the following:

<u>MARK</u>	<u>REG. NO.</u>	<u>GOODS</u>
BALANCE	2,745,850	Protein based, nutrient-dense snack bars
BALANCE BAR	2,659,753	Nutritional food supplements
BALANCE GOLD	2,636,101	Snack bars

4. The said registrations are valid and subsisting in the name of Opposer Balance Bar Company, are in full force and effect, and constitute evidence of

Opposer's exclusive right to use BALANCE and formatives thereof in commerce in connection with the goods specified in the registrations aforesaid.

5. The said registrations are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of Opposer's exclusive right to use the said marks in commerce in connection with the goods specified in said registrations.

6. Opposer also owns a use-based trademark application for BALANCE in the United States Patent and Trademark Office, namely:

<u>MARK</u>	<u>APP. NO.</u>	<u>GOODS</u>
BALANCE	85/099,089	Nutritional supplements; dietary food supplements; cereal-based, rice-based, or granola-based snack bars and snack foods

The application shows dates of first use in commerce as early as 1992, which, upon information and belief, is prior to any date on which Applicant can rely.

7. Upon information and belief, Applicant is a company organized in Delaware, located at Suite 260, 115 West Century Rd., Paramus, NJ 07652.

6. On November 3, 2009, Applicant filed intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), to register the designation SMART BALANCE (Serial No. 77/864,206) to cover goods in Class 5, including "meal replacement bars" and other related goods, and said application was published for opposition on April 20, 2010.

7. Through its longstanding and continuous use of the BALANCE trademark, Opposer has acquired exclusive rights in the BALANCE trademark that significantly predate any date upon which Applicant may rely.

8. Opposer's BALANCE trademark is famous and became famous before November 3, 2009, the filing date or any use of the SMART BALANCE designation by Applicant.

9. The "BALANCE" portion of Applicant's SMART BALANCE designation is identical to and fully incorporates Opposer's BALANCE trademark.

10. The goods set forth in the Application are either identical or closely related and similar to the goods on which Opposer uses its BALANCE mark.

11. Opposer believes it will be damaged by registration of Applicant's SMART BALANCE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles the BALANCE trademark used by Opposer in the United States as to be likely, when used on or in connection with the goods identified in the SMART BALANCE application, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

14. Opposer believes it will be damaged by registration of the SMART BALANCE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the SMART BALANCE designation is likely to dilute the distinctive quality of Opposer's famous BALANCE trademark, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer believes it will be damaged by the registration of the claimed trademark in Application Serial No. 77/864,206 and requests that this opposition be sustained and that registration to Applicant be refused.

Please charge our Deposit Account No. 041105 in the amount of \$300.00 for the opposition fee.

Dated: New York, New York  
October 15, 2010

Respectfully submitted,

EDWARDS ANGELL PALMER & DODGE, LLP

A handwritten signature in black ink, reading "David I. Greenbaum". The signature is fluid and cursive, with the first name "David" and last name "Greenbaum" clearly legible.


By \_\_\_\_\_  
David I. Greenbaum

750 Lexington Avenue  
New York, New York 10022  
(212) 308-4411  
Attorney for Opposer  
Opposer's Ref: 307569.4074

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 15, 2010, a copy of the foregoing Notice of Opposition was served first class mail, postage pre-paid to the Applicant's Correspondent of Record at the following address:

PATRICK M. BERGIN  
DAVIS & KUELTHAU, S.C.  
111 E KILBOURN AVE STE 1400  
MILWAUKEE, WI 53202-6613



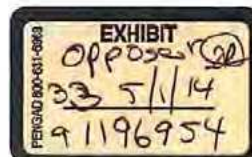
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Opposition No. 91212477  
BALANCE BAR COMPANY v. GFA BRANDS, INC.  
Re-Offered by Applicant, GFA Brands, Inc.  
(Previously Offered in Opposition Nos. 91196954 and 91197748)

AGREEMENT

REDACTED

12/12/91





REDACTED

12/12/97

2

REDACTED

12/12/97

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REDACTED

12/12/97

4

REDACTED

12/12/97

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REDACTED

12/12/97

6

УДК 62-50 : 62-75 : 62-85

REDACTED

12/12/97

7

REDACTED

12/12/97

8

REDACTED

12/12/97

9



EXHIBIT 1

REDACTED

REDACTED

EXHIBIT 2

REDACTED

TRADEMARK SETTLEMENT AGREEMENT  
REDACTED

2001-05-02

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REDACTED

2001-05-02

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2001-05-02

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2001-05-02

Page 4 of 4

**SCHEDULE A  
REDACTED**

2001-04-20

Page 1 of 2



REDACTED

2001-04-26

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